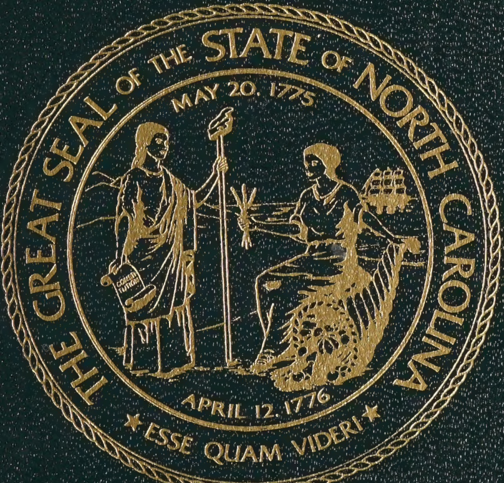
GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

Volume 14

Chapters 115C Through 122C

Prepared Under the Supervision of
The Department of Justice
of the State of North Carolina
by
The Editorial Staff of the Publisher

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Preface

This volume contains the general laws of a permanent nature enacted by the General Assembly through the 2009 Regular Session that are within Chapters 115C through 122C, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

A ready reference index is included at the back of this volume. This index is intended to give the user a quick reference to larger bodies of statutes within this volume only. For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2009 Regular Session affecting Chapters 115C through 122C of the General Statutes.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted through September 18, 2009. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821, 1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 2009

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2009 Replacement Code to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

Roy Cooper
Attorney General of North Carolina

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SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person of the State less than 21 years old, who has not completed a standard high school course of study. There shall be operated in every local school administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24; 1971, c. 704, s. 1; c. 1231, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 21; 1985, c. 780, s. 1.)

Cross References. — As to the establishment of the School-Based Child and Family Team Initiative, see G.S. 143B-366.

Local Modification. — (As to Chapter 115C) Cabarrus: 2000-87; (As to Chapter 115C) Caswell: 1987 (Reg. Sess., 1988), c. 1016, s. 12; Cumberland: 1991, c. 445; 1991, c. 445; 1991 (Reg. Sess., 1992), c. 810; Nash: 1989 (Reg. Sess., 1990), c. 903; city of Clinton: 1989 (Reg. Sess., 1990), c. 886; Durham City Board of Education: 1983 (Reg. Sess., 1984), c. 948; Kannapolis City School Administrative Unit: 1983 (Reg. Sess., 1984), c. 963; Monroe City Board of Education: 1985, c. 41; New Hanover County Board of Education: 1983, c. 573.

Teacher Training Task Force. — Session Laws 1991 (Reg. Sess., 1992), c. 971, as amended by Session Laws 1993, c. 561, s. 58(a) and (b), establishes a new Teacher Training Task Force to review the progress made toward implementing the 39 objectives of the original Task Force established in 1985 regarding teacher education, and to study additional issues of legislative concern. The Task Force was mandated to study both preservice and ongoing professional development of teachers.

For similar prior provisions, see Session Laws 1993, c. 561, s. 52(b), Session Laws 1999-237, s. 8.6(a), as amended by Session Laws 2000-67, s. 8.25, and Session Laws 2001-424, s. 28.7(a)-(f), as amended by Session Laws 2004-124, s. 7.9A.

Commission on Improving Academic Achievement. — Session Laws 1999-395, ss. 15.1(a), 15.1(b) and 15.2 to 15.11, as amended by Session Laws 2001-424, ss. 28.30(g) and (h), provide for the creation of a Commission on Improving the Academic Achievement of Minority and At-Risk Students. Provisions are made for: 15.1(a) Commission membership; 15.1(b) initial appointments and terms of service; 15.2 co-chairs; 15.3 authorized powers; 15.4 study goals; 15.5 interim report (due April 1, 2002) and final report of findings (due January 10, 2003); 15.6 statutory powers; 15.7 subsistence and travel expenses of members; 15.8 consultant services; 15.9 vacancies on the Commission; 15.10 cooperation of State departments, agencies and local governments; and 15.11 funding.

Performance-Based Licensure Program — Suspension of Portfolio Requirement. — Session Laws 2002-126, s. 7.18(a)-(e), as amended by 2003-284, s. 7.39, provides: "(a) The State Board of Education, in consultation with the Board of Governors of The University of North Carolina and the Education Cabinet, shall review teacher preparation programs and the continuing certification process to determine how these programs can be modified to enhance the continuing teacher certification process and to reduce the burden the continuing certification process places on newly certified teachers. This evaluation shall consider strategies for streamlining the current continuing certification process.

"(b) The State Board of Education shall contract with an outside consultant to study and propose modifications to the current North Carolina initial certification, continuing certification, and recertification programs that ensure high standards, support for teachers, and high retention rates. Specifically, the contractor shall:

"(1) Review the administration and implementation of the certification programs and identify significant strengths and weaknesses of the programs;

"(2) Identify issues related to administration, staffing, and paperwork at the school, local, and State levels;

"(3) Investigate and identify communication concerns about the certification programs between the school, local, and State levels;

"(4) Randomly survey and interview participating teachers and administrators regarding key aspects of the certification programs and ways to improve them;

"(5) Examine the possibility of making the programs more focused on and supportive of early teacher development and integrating them more appropriately into a teacher's daily work;

"(6) Examine the portfolios previously submitted and identify the elements that are most troublesome to teachers, schools, and school systems;

"(7) Identify alternatives to the portfolio approach and ways to keep paperwork requirements to a minimum;

"(8) Review the State's mentor program and the mentor's role in support of certification efforts to determine whether the two programs are complementary;

"(9) Examine the effect of the certification programs on teacher retention, using valid evidence; and

"(10) Examine the impact the certification programs have on improving teaching practices, using valid evidence.

"(c) The State Board of Education shall use the results of the study to make recommendations to:

"(1) Improve the administration and implementation of the certification programs, including improving the process for teachers;

"(2) Resolve the issues surrounding the portfolio process and the collection of professional evidence during initial certification;

"(3) Reduce paperwork and bureaucracy in initial certification, continuing certification, and recertification for teachers, schools, and school systems;

"(4) Provide schools and districts incentives and flexibility to participate in more rigorous certification processes;

"(5) Effectively use information regarding teacher supply and demand, standards and retention to inform policy decisions;

"(6) Improve the relationship and coordination between the certification programs and mentoring programs;

"(7) Provide appropriate sample work to teachers, including lesson plans, unit plans, and other professional work required during initial certification; and

"(8) Provide ongoing program evaluation to monitor the quality of the programs and to inform policymakers.

"(d) The State Board of Education shall enlist the assistance of the Southern Regional Education Board in evaluating the responses to the request for proposals. Prior to awarding the contract for the consultant study, the State Board shall consult with the Joint Legislative Education Oversight Committee.

"The State Board shall use federal No Child Left Behind State Grants for Improving Teacher Quality, to the extent possible, to cover the cost of the consultant and study.

"The State Board shall report the findings of the consultant and the recommendations required by this section to the Joint Legislative Education Oversight Committee by January 1, 2004.

"(e) The Joint Legislative Education Oversight Committee shall make recommendations to the General Assembly on any changes to law or policy affecting certification of teachers on or after August 1, 2004, after reviewing the findings and recommendations of the consultant and State Board of Education."

Session Laws 2002-126, s. 7.25(a)-(c), provides: "(a) The class size allotment for first grade for the 2002-2003 school year shall be one teacher for every 18 students. The average class size for first grade within a local school administrative unit shall not exceed 21 students. The maximum class size for first grade for individual classes for the 2002-2003 fiscal year shall be 24 students.

"(b) For the 2002-2003 school year only, a local school administrative unit shall use these additional teacher positions to reduce class size in first grade.

"(c) For the 2003-2004 school year and subsequent school years, the maximum class size limit for first grade shall be based on an allotment ratio of one teacher for every 18 students."

Reports on Expenditure of Supplemental Funds for Low-Wealth Counties. — Session Laws 2005-276, s. 7.60, provides: "Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

Disadvantaged Student Supplemental Funding. — Session Laws 2007-323, s. 7.8(a)-(d), as amended by Session Laws 2008-107, s. 7.9, provides: "(a) Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

"Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

"(1) Provide instructional positions or instructional support positions and/or professional development;

"(2) Provide intensive in-school and/or after-school remediation;

"(3) Purchase diagnostic software and progress-monitoring tools; and

"(4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

"The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

"(b) Funds are appropriated in this act to evaluate the Disadvantaged Student Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

"(1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and

"(2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

"The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each year.

"(c) Funds appropriated to a local school administrative unit for disadvantaged student supplemental funding shall be allotted based on: (i) the local school administrative unit's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

"(1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 19.9;

"(2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:19.4;

"(3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.1; and

"(4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2006-2007.

"For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula.

"(d) If a local school administrative unit's wealth increases to a level that adversely affects the unit's DSSF allotment ratio, the DSSF allotment for that unit shall be maintained at the prior year level for one additional fiscal year."

For similar prior provisions, see Session Laws 2005-276, s. 7.8(a)-(c), as amended by Session Laws 2006-66, s. 7.10.

Funds to Implement the ABCs of Public Education. — Session Laws 2006-66, s. 7.6(a)-(c), provides: "(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2005-2006 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

"(1) Incentive awards in schools that achieve higher than expected improvements may be up to:

"a. One thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and

"b. Five hundred dollars ($500.00) for each teacher assistant.

"(2) Incentive awards in schools that meet the expected improvements may be up to:

"a. Seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and

"b. Three hundred seventy-five dollars ($375.00) for each teacher assistant.

"(b) Notwithstanding G.S. 143-23, the State Board of Education may use funds appropriated to the Department of Public Instruction and to the State Public School Fund to establish a consolidated, comprehensive program through which to provide assistance to low-performing schools. For this purpose only, the Board may, with approval from the Office of State Budget and Management, transfer funds between personal service and nonpersonal service line items currently supporting positions, related operating costs, and contracts for school improvement teams and for assistance teams. Funds transferred pursuant to this section shall not be used to raise the salary of existing employees.

"The Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations by January 15, 2007, on any restructuring of the assistance program pursuant to this section.

"(c) The State Board of Education shall review the incentive award structure described in this section to ensure that extraordinary performance is rewarded. In addition, the Board shall determine whether the relationship between awards for teachers and teacher assistants and the Board's strategic priorities is appropriate. The Board shall provide a preliminary report of its findings and recommendations to the Joint Legislative Education Oversight Committee by December 15, 2006."

Funds to Implement the ABCs of Public Education. — Session Laws 2008-107, s. 7.3, provides: "(a) The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2007-2008 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

"(1) Incentive awards in schools that achieve higher than expected improvements may be:

"a. Up to one thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and

"b. Up to five hundred dollars ($500.00) for each teacher assistant.

"(2) Incentive awards in schools that meet the expected improvements may be:

"a. Up to seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and

"b. Up to three hundred seventy-five dollars ($375.00) for each teacher assistant.

"The State Board of Education shall limit the amount expended for this program to the average expenditure for this program over the last 11 years, which is ninety-four million three hundred twenty-five thousand six hundred twelve dollars ($94,325,612).

"(b) The State Board of Education may use funds appropriated to the State Public School Fund to implement the consolidated assistance program, as directed in Section 7.6(b) of S.L. 2006-66. The Board shall report to the Joint Legislative Education Oversight Committee by January 15, 2009, on any restructuring of the program pursuant to this section." For prior similar provisions, see Session Laws 2007-323. s. 7.18.

Study of Public School Funding Formulas. — Session Laws 2007-323, s. 7.31(a)-(f), provides: "(a) There is created the Joint Legislative Study Committee on Public School Funding Formulas. The Committee shall consist of six members of the House of Representatives appointed by the Speaker of the House of Representatives and six members of the Senate appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Committee.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee.

"(b) The Committee shall perform an extensive study of the following public school funding formulas:

"(1) Children with Disabilities;

"(2) Limited English Proficiency;

"(3) At-Risk Student Services/Alternative Schools;

"(4) Improving Student Accountability;

"(5) Disadvantaged Students Supplemental;

"(6) Low-Wealth Counties Supplemental Funding;

"(7) Small County Supplemental Funding;

"(8) Transportation of Pupils; and

"(9) Academically or Intellectually Gifted.

"(c) The Committee shall also study the State Board of Education's model for projecting average daily membership and focus particularly on how well the model projects average daily membership in rapidly growing local school administrative units with a highly mobile population.

"(d) The Committee shall submit a report of its findings and recommendations, including any legislative recommendations, to the 2008 Regular Session of the 2007 General Assembly. The Committee shall terminate upon filing its report."

Session Laws 2008-181, ss. 37.1 through

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37.3, provides: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Session Laws 2009-276, ss. 1-4, provides: "1. The Joint Legislative Study Committee on Public School Funding Formulas, which was established on November 27, 2007, by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly, and was subsequently modified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications."

"2. Notwithstanding G.S. 120-19.6, the Committee may meet during sessions of the General Assembly."

"3. The Committee may report to the General Assembly at least once a year on its activities."

"4. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Dropout Prevention Grants. — Session Laws 2007-323, s. 7.32(a)-(f), as amended by Session Laws 2008-107, ss. 7.14(a) and 7.14A, and as amended by Session Laws 2008-181, s. 35.1, provides: "(a) Findings. — The General Assembly finds that:

"(1) North Carolina's schools recorded 22,180 dropout events in grades 9-12 for 2005-2006, a nine and nine-tenths percent (9.9%) increase from the count reported in 2004-2005. It is the highest count of dropouts since 1999-2000.

"(2) A disproportionate share of the increase in dropout rates occurred in large local school administrative units.

"(3) Black males accounted for a disproportionate amount of the increase in dropout count, and the dropout rate for black males increased to seven and one-hundredths percent (7.01%), an eight and four-tenths percent (8.4%) increase over the 2004-2005 rate.

"(4) Students drop out of school for a variety of reasons, including academic issues, family and other personal reasons, discipline issues, drug abuse, the need to work, school size, and school climate.

"(5) Students who drop out of school without graduating are more likely to be unemployed, receive public assistance, and have a higher incarceration rate than those who graduate.

"(6) In order for our citizens and State to thrive in a global, knowledge-based economy, it is imperative that more of our students graduate from high school with the knowledge and skills needed for postsecondary education or high-skilled employment.

"(7) Differing local needs and local resources necessitate the development of locally generated programs and initiatives that target dropouts and high school retention.

"(b) Purpose. — Recognizing that having an unacceptable dropout rate is not a new development in North Carolina, or in the rest of the country, and that over the years there have been, and continue to be, many programs and initiatives that have strived to address this issue, the purpose of this section is to focus attention and resources on innovative programs and initiatives that succeed in keeping students in school when other conflicting factors are pushing them to drop out before they are prepared to further their postsecondary education or enter the workforce.

"(c) Committee. — There is established the Committee on Dropout Prevention. The Committee shall be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee and shall provide staff to the Committee.

"The Committee shall determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under subsection (d) of this section, the amount of each grant, and eligible uses of the grant funding. The Committee shall consist of the following 15 members:

"(1) The Governor shall appoint five members, of whom one is a superintendent of schools, one is a representative of a nonprofit, and one is a school social worker;

"(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint five members, of whom one is a principal, one is a representative of a school of education, and one is a school counselor; and

"(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint five members, of whom one is a teacher, one is a member of the business community, and one is a representative of the juvenile justice system.

"The President Pro Tempore of the Senate

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and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest.

"(d) Dropout Prevention Grants. — The following criteria apply to dropout prevention grants approved by the Committee established under subsection (c) of this section.

"(1) Grants shall be issued in varying amounts up to a maximum of one hundred fifty thousand dollars ($150,000).

"(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.

"(3) Priority shall be given to new programs and initiatives or to those that have begun within the last five school years.

"(4) Grants shall be distributed geographically throughout the State.

"(5) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.

"(6) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

"(7) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

"(8) Programs and initiatives that receive grants under this subsection shall be based on best practices for preventing students from dropping out of school or for increasing the high school completion rate for those students who already have dropped out of school.

"(9) Priority for grants shall be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.

"(10) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

"(12) Grants shall be made no later than November 1, 2007.

"(e) Report. — The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate on December 31, 2010

"(f) Joint Legislative Commission on Dropout Prevention and High School Graduation. —

"(1) There is created the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission) to be composed of 16 members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. The President Pro Tempore and the Speaker shall each designate a cochair from their appointees. Vacancies shall be filled in the same manner as the original appointments were made.

"(2) The cochairs shall jointly call the first meeting of the Commission. A quorum of the Commission is a majority of its members.

"(3) The Commission shall:

"a. Evaluate initiatives and programs designed to reduce the dropout rate and increase the number of students who graduate from high school prepared to further their postsecondary education or enter the workforce.

"b. Review the research on factors related to students' success in school.

"c. Evaluate the grants awarded under subsection (d) of this section and recommend whether any of the programs and initiatives that received one of these grants has potential for success and should be expanded or replicated.

"d. Study the emergence of major middle school and high school reform efforts, including Learn and Earn Programs, the New Schools Initiative, and 21st Century Schools, and the impact they may have on the dropout rate.

"e. Examine strategies, programs, and support services that should be provided if the compulsory school attendance age is raised to enable students to graduate from high school and time lines for implementing those strategies, programs, and support services.

"f. Following a review of the courses required for graduation and the current system of awarding credit for those courses, determine whether changes should be made that better recognize the different learning rates and other needs of students.

"g. Determine which interventions and other strategies, such as accelerated learning, tutoring, mentoring, or small class sizes, when employed as a substitute to grade retention or as a subsequent measure to grade retention, are the most effective at enabling these students to remain in school and graduate.

"h. Study any other issue that the Commission considers relevant and appropriate.

"(4) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional and clerical staff to assist in the work of the Joint Legislative Commission on Dropout Prevention and High School Graduation. The expenses of employment of the clerical staff shall be borne by the Joint Legislative Commission on Dropout Prevention and High School Graduation.

"(5) The Commission may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission, through the Legislative Services Officer, shall grant to the Joint Legislative Commission on Dropout Prevention and High School Graduation adequate meeting space in the State Legislative Building or the Legislative Office Building.

"(6) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

"a. Members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;

"b. Members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6; and

"c. All other members, at the rate established in G.S. 138-5.

"(7) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"(8) The Commission shall submit an interim written report of its findings and recommendations on or before the convening of the 2009 Session of the General Assembly. The Commission may submit an interim report, including any recommendations and proposed legislation, to the Joint Legislative Education Oversight Committee and the General Assembly by May 1, 2010, and shall submit a final written report of its findings and recommendations on or before the convening of the 2011 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate."

Session Laws 2008-107, s. 7.14(b), provides: "Committee. — The Committee on Dropout Prevention, as created in Section 7.32 of S.L. 2007-323, is reestablished to determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under this section, the amount of each grant, and eligible uses of the grant funding. When utilizing outside grant reviewers and raters, the Committee is encouraged to utilize individuals who represent public schools, universities, and community-based organizations.

"The Committee shall continue to be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee. The Department of Public Instruction shall contract with an independent consultant to serve as staff to the Committee, to provide technical assistance to the grant recipients for the length of the grant, and to assist the Committee in evaluating the impact of the grants awarded.

"The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest. The Committee shall meet on the call of the cochairs provided that the Committee shall meet at least once every three months.

"In the event of a vacancy on the Committee, the appointing authorities are encouraged to provide representation on the Committee from each of the eight educational districts as defined in G.S. 115C-65."

Session Laws 2008-107, s. 7.14(c)-(e), provided selection criteria for Dropout Prevention Grant recipients, provided criteria for Dropout Prevention Grants, and provided for the evaluation and reporting of the impact Dropout Prevention Grants awarded under Session Laws 2007-323 and 2008-107 have on dropout prevention.

Session Laws 2008-107, s. 7.14(f), provides: "Dropout Prevention Network. — In addition to its other duties, the Joint Legislative Commission on Dropout Prevention and High School Graduation, established under Section 7.32 of S.L. 2007-323, shall study the development of an effective network for the purpose of sharing best practices among the grant recipients, the public schools, and other interested organizations. The Commission shall consider interactive Web sites, electronic information sharing, professional development opportunities, conferences, and other means that it believes would be effective. The Commission may consult with the Department of Public Instruction and the Committee on Dropout Prevention. The Commission shall report its findings and any recommendations to the 2009 General Assembly."

Session Laws 2008-107, s. 7.14(g), as amended by 2008-118, s. 1.3(b), and s. 7.14(i) and (j), provide for specific appropriations for the Committee on Dropout Prevention. Session Laws 2008-107, s. 7.14(h), effective June 30, 2008, makes the appropriations non-reverting.

Session Laws 2009-451, s. 7.13(a)-(f), as amended by Session Laws 2009-575, s. 3L, reestablishes the Committee on Dropout Prevention, sets criteria for awarding new Dropout Prevention Grants, evaluating impact of awarded grants, adding requirements for modifying programs and for Nonprofit organizations receiving dropout grants and makes specific appropriations.

Task Force on Preventing Childhood Obesity. — Session Laws 2008-107, s. 10.17(cc), as amended by Session Laws 2008-

118, s. 1.5(b), provides: "The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Humans Services, Division of Public Health, for the 2008-2009 fiscal year shall be used to establish a Task Force on Preventing Childhood Obesity (Task Force) to be cochaired by the State Health Director and the Chairman of the State Board of Education. The Task Force is to review current State activities in the Department of Health and Human Services, the Department of Public Instruction, and the Health and Wellness Trust Fund and develop a comprehensive statewide strategic plan with recommendations for preventing childhood obesity. The goals of the strategic plan shall encompass the following framework of initiatives:

"(1) Providing healthier foods to students;

"(2) Improving the availability of healthy foods at home and in the community;

"(3) Increasing the frequency, intensity, and duration of physical activity in schools;

"(4) Encouraging communities to establish a master plan for pedestrian and bicycle pathways;

"(5) Improving access to safe places where children can play; and

"(6) Developing activities or programs that limit children's screen time, including limits on video games and television.

"Membership on the task force shall include, but is not limited to, representatives from the following organizations:

"(1) Health and Wellness Trust Fund.

"(2) North Carolina Institute for Public Health.

"(3) UNC Active Living by Design.

"(4) Blue Cross Blue Shield of North Carolina.

"(5) NC Hospital Association.

"(6) NC Parent Teacher Association.

"(7) American Heart Association.

"(8) School Nutrition Association of North Carolina.

"(9) Association of Local Health Directors.

"The Chairman of the State Board of Education and the State Health Director shall report to the House of Representatives Chairs of the Appropriations Subcommittees on Health and Human Services and Education, the Senate Chairs of the Appropriations Committees on Health and Human Services and Education/Public Instruction, the Joint Legislative Oversight Committee on Education, the Joint Legislative Oversight Committee on Health, and the Fiscal Research Division on the Task Force on Preventing Childhood Obesity's strategic plan and recommendations by January 15, 2009, or upon the convening of the 2009 Session of the General Assembly, whichever occurs first.

Legislative Task Force on Childhood Obesity. — Session Laws 2009-574, ss. 49.1-49.7, provide: "SECTION 49.1 There is created the Legislative Task Force on Childhood Obesity.

"SECTION 49.2. The Task Force shall consist of 12 members as follows:

"(1) Six members of the House of Representatives.

"(2) Six members of the Senate.

"SECTION 49.3. The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Task Force shall be filled by the same appointing authority that made the initial appointment. A quorum of the Task Force shall be a majority of its members.

"SECTION 49.4. The Task Force shall include, but should not be limited to, study of issues relating to childhood obesity. In the course of the study, the Task Force shall consider and recommend to the General Assembly strategies for addressing the problem of childhood obesity and encouraging healthy eating and increased physical activity among children through:

"(1) Early childhood intervention;

"(2) Childcare facilities;

"(3) Before and after-school programs;

"(4) Physical education and physical activity in schools;

"(5) Higher nutrition standards in schools;

"(6) Comprehensive nutrition education in schools;

"(7) Increased access to recreational activities for children;

"(8) Community initiatives and public awareness; and

"(9) Other means.

"SECTION 49.5. The Task Force shall encourage input from public nonprofit organizations, promoting healthy lifestyles for children, addressing the problems related to childhood obesity, encouraging healthy eating, and increasing physical activity among children.

"SECTION 49.6. Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Task Force, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Task Force may meet at anytime upon the joint call of the cochairs. The Task Force may meet in the Legislative Building or the Legislative Office Building.

"With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Task Force in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Task Force, and the expenses relating to the clerical employees shall be borne by the Task Force.

The Task Force may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Task Force hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services."

"All State departments and agencies and local governments and their subdivisions shall furnish the Task Force with any information in their possession or available to them.

"SECTION 49.7. The Task Force shall submit a final report of the results of its study and its recommendations to the 2010 Regular Session of the 2009 General Assembly. The Task Force shall terminate on May 1, 2010, or upon the filing of its final report, whichever occurs first."

Citizens Schools Program Pilot. — Session Laws 2008-107, s. 10.17(p), provides: "The sum of six hundred thousand dollars ($600,000) appropriated under this section in the TANF block grant to the Department of Health and Human Services, Division of Social Services, for the 2008-2009 fiscal year shall be used to implement a Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance county public school systems. The Citizens Schools Program provides high-quality, extended learning time for middle school students in schools with high percentages of minority students, poor students, or both, and students with other risk factors for dropping out and reduces the rate of teen pregnancy. Students in the Citizens Schools Program receive after-school instruction in groups of eight to 12 students per adult. The instruction includes: (i) 60 minutes of daily academic support with strong study skills and critical thinking components, (ii) four 11-week apprenticeships, using volunteers as leaders focusing on 21st century skills, and (iii) career exploration and choice time to further explore a variety of interests. Citizens Schools Team Leaders contact each student's family by telephone at least every two weeks to discuss the student's participation and progress.

"North Carolina State University shall evaluate the program to ensure that the program is effectively helping students stay in school and successfully graduate in their four-year cohort. The evaluation shall include a long-term study of the graduation cohort rate increase as well as short-term measures, including attendance, grade point average, discipline, the program dropout rate, credits earned, and postsecondary education matriculation. Not later than January 1, 2009, North Carolina State University shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the results of its evaluation."

Use of Supplemental Funding in Low Wealth Counties. — Session Laws 2009-451, s. 7.3, provides: "(a) Use of Funds for Supplemental Funding. — All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

"(b) Definitions. — As used in this section:

"(1) 'Anticipated county property tax revenue availability' means the county-adjusted property tax base multiplied by the effective State average tax rate.

"(2) 'Anticipated total county revenue availability' means the sum of the:

"a. Anticipated county property tax revenue availability,

"b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,

"c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and

"d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

"(3) 'Anticipated total county revenue availability per student' means the anticipated total county revenue availability for the county divided by the average daily membership of the county.

"(4) 'Anticipated State average revenue availability per student' means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.

"(5) 'Average daily membership' means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.

"(6) 'County-adjusted property tax base' shall be computed as follows:

"a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county, "b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,

"c. Add to the resulting amount the:

"1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,

"2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and

"3. Personal property value for the county.

"(7) 'County-adjusted property tax base per square mile' means the county-adjusted property tax base divided by the number of square miles of land area in the county.

"(8) 'County wealth as a percentage of State average wealth' shall be computed as follows:

"a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,

"b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,

"c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,

"d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

"(9) 'Effective county tax rate' means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.

"(10) 'Effective State average tax rate' means the average of effective county tax rates for all counties.

"(11) 'Local current expense funds' means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

"(12) 'Per capita income' means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

"(13) 'Sales assessment ratio studies' means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

"(14) 'State average current expense appropriations per student' means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

"(15) 'State average adjusted property tax base per square mile' means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.

"(16) 'Supplant' means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

"(17) 'Weighted average of the three most recent annual sales assessment ratio studies' means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

"(c) Eligibility for Funds. — Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

"(d) Allocation of Funds. — Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

"(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. — The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

"(f) Minimum Effort Required. — Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

"(g) Nonsupplant Requirement. — A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

"(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

"(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

"(h) Reports. — The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

"(i) Department of Revenue Reports. — The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property."

For similar prior provisions, see Session Laws 1999-237, s. 8.5(a)-(j), Session Laws 2001-424, s. 28.6(a)-(j), Session Laws 2003-284, s. 7.6(a)-(j), Session Laws 2005-276, s. 7.6(a)-(j), and Session Laws 2007-323, s. 7.6(a)-(j).

Small School System Supplemental Funding. — Session Laws 2009-451, s. 7.4(a)-(f), as amended by Session Laws 2009-575, s. 3M(a), provides: "(a) Funds for Small School Systems. — Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

"(1) Round all fractions of positions to the next whole position.

"(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.

"(3) Provide additional program enhancement teachers adequate to offer the standard course of study.

"(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

"(5) Provide a base for the consolidated funds allotment of at least seven hundred eighty-eight thousand seven hundred eighty-nine dollars ($788,789), excluding textbooks, for the 2009-2010 fiscal year and a base of seven hundred eighty-eight thousand seven hundred eighty-nine dollars ($788,789) for the 2010-2011 fiscal year.

"(6) Allot vocational education funds for grade 6 as well as for grades 7-12. If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula also is not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

"(b) Nonsupplant Requirement. — A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

"(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

"(2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

"(c) Phase-Out Provisions. — If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for seven years after the unit becomes ineligible.

"(d) Definitions. — As used in this section:

"(1) 'Average daily membership' means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.

"(2) 'County-adjusted property tax base per student' means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

"(3) 'Local current expense funds' means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

"(4) 'Sales assessment ratio studies' means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

"(5) 'State-adjusted property tax base per student' means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

"(6) 'Supplant' means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

"(7) 'Weighted average of the three most recent annual sales assessment ratio studies' means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

"(e) Reports. — The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

"(f) Use of Funds. — Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7."

For similar prior provisions, see Session Laws 1993, c. 561, s. 52(b), Session Laws 1999-

237, s. 8.6(a), as amended by Session Laws 2000-67, s. 8.25, Session Laws 2001-424, s. 28.7(a)-(f), Session Laws 2003-284, s. 7.7(a)-(f), as amended by Session Laws 2004-124, s. 7.9A, Session Laws 2005-276, s. 7.7(a)-(f), and Session Laws 2007-323, s. 7.7(a)-(f), as modified by Session Laws 2008-107, s. 7.20.

NC Virtual Public School Program. — Session Laws 2009-451, s. 7.9(a)-(g), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

"The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

"The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"(e) The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

"(1) The General Fund appropriation for NCVPS;

"(2) Available American Recovery and Reinvestment Act of 2009 funds; and

"(3) Up to six million dollars ($6,000,000) from the School Technology appropriation.

"(f) NCVPS shall only provide high school courses.

"(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

"If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education."

For similar prior provisions, see Session Laws 2005-276, s. 7.41(a)-(e), 2006-66, s. 7.16(a)-(e), and Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a).

Editor's Note. — This Chapter is former Chapter 115, as rewritten by Session Laws 1981, c. 423, s. 1, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the Chapter as rewritten and recodified.

Many of the cases and opinions cited in the annotations under the various sections of this Chapter were decided under corresponding sections of former Chapter 115 and earlier statutes.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000.'"

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-275, s. 1, provides: "The Joint Legislative Education Oversight Committee shall study strategies for recovering costs due to damaged and lost textbooks. In the course of the study, the Committee shall consider the scope of the problem and strategies for recouping the replacement costs. The Committee shall report the results of this study to the General Assembly by March 31, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-323, s. 7.42, as added by Session Laws 2007-345, s. 5.3, provides: "(a) There is created the Joint Legislative Study Committee on Public School Funding Formulas. The Committee shall consist of 10 members of the House of Representatives appointed by the Speaker of the House of Representatives and 10 members of the Senate appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Committee.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

For provisions of Session Laws 2009-339 preamble and ss. 1 through 11, which created the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission, see notes at G.S. 115C-10.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Session Laws 2009-574, s. 24.1, provides: "The Board of Governors of The University of North Carolina, in coordination with the Department of Public Instruction and the North Carolina Independent Colleges and Universities, may direct the appropriate entity to study the impacts of raising the compulsory public school attendance age prior to completion of a high school diploma from 16 to 17 or 18 and may report to the Joint Legislative Education Oversight Committee prior to May 1, 2010."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

CASE NOTES

Minimum Quantum of Educational Instruction Required. — G.S. 115C-1, consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. How that minimum quantum of instruction is translated into an annual school calendar is then prescribed by G.S. 115C-84.2, which sets out certain requirements, but otherwise mandates that the local board shall designate when the 180 instructional days shall occur and specifically recognizes year-round schools as a permissible calendaring scheme. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Board of Education Has Authority to Assign Students to Year-Round Schools. — G.S. 115C-1 does not limit the authority of a county board of education to assign students to year-round schools because G.S. 115C-1, consistent with the purpose of the constitutional provision it was designed to implement, N.C. Const. art. IX, § 2, does not mandate equal access to a school term of nine consecutive months but rather refers to the minimum quantum of educational instruction required; G.S. 115C-1 merely codifies the State's constitutional requirement of a general and uniform system of free public schools, which shall be maintained at least nine months in every year, N.C. Const. art. IX, § 2, and while the educational opportunities available to children attending year-round schools may differ from those available to pupils at traditional schools, these differences do not remove year-round calendar schools from the "uniform system" of public schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

§ 115C-2. Administrative procedure.

All action of agencies taken pursuant to this Chapter, as agency is defined in G.S. 150B-2, is subject to the requirements of the Administrative Procedure Act, Chapter 150B of the General Statutes. (1981, c. 423, s. 1; 1987, c. 827, s. 1.)

§ 115C-3. Access to information and public records.

Except as otherwise provided in this Chapter, access to information gathered and public records made pursuant to the provisions of this Chapter must be in conformity with the requirements of Chapter 132 of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-4. Open meetings law.

Meetings of governmental bodies held pursuant to the provisions of this Chapter must be in conformity with the requirements of Article 33C of Chapter 143 of the General Statutes. (1981, c. 423, s. 1.)

CASE NOTES

An action by a Board of Education to give itself a pay raise must be deliberated at a meeting open to the public. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

Applied in Davis v. Durham Mental Health/ Development Disabilities/Substance Abuse Area Auth., 165 N.C. App. 100, 598 S.E.2d 237, 2004 N.C. App. LEXIS 1156 (2004).

§ 115C-5. Definitions.

As used in this Chapter unless the context requires otherwise:

(1) The State Board of Education may be referred to as the "Board" or as the "State Board."

(2) The governing board of a city administrative unit is "the ______ city board of education."

(3) The governing board of a county administrative unit is "the ______ county board of education."

(4) The term "school district" means any district defined by G.S. 115C-69.

(5) "Local board" or "board" means a city board of education, county board of education, or a city-county board of education.

(6) "Local school administrative unit" means a subdivision of the public school system which is governed by a local board of education. It may be a city school administrative unit, a county school administrative unit, or a city-county school administrative unit.

(7) The executive head of a school shall be called "principal."

(8) The executive officer of a local school administrative unit shall be called "superintendent." "Superintendent" means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.

(9) "Supervisor" means a person paid on the supervisor salary schedule who supervises the instructional program in one or more schools and is under the immediate supervision of the superintendent or his designee.

(10) The term "tax-levying authority" means the board of county commissioners of the county or counties in which an administrative unit is located or such other unit of local government as may be granted by local act authority to levy taxes on behalf of a local school administrative unit. (1955, c. 664; c. 1372, art. 1, ss. 8, 9; 1965, c. 584, s. 2; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1975, c. 437, s. 10; 1979, c. 864, s. 2; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 2; 1997-456, s. 27.)

CASE NOTES

Claims Against Education Board Properly Dismissed. — Alamance-Burlington Board of Education was a local board of education as defined in G.S. 115C-5(5); a trial court's dismissal of a father's claims arising from the death of a student who was struck by a school bus was proper because the claims were inseparably connected to events occurring at the time the driver was operating the bus in the course of his employment, and thus fell within G.S. 143-300.1. The North Carolina Industrial Commission therefore had exclusive jurisdiction. Stacy v. Merrill, 191 N.C. App. 131, 664 S.E.2d 565, 2008 N.C. App. LEXIS 1156 (2008).

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§§ 115C-6 through 115C-9: Reserved for future codification purposes.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-10. Appointment of Board.

The State Board of Education shall consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Not more than two public school employees paid from State or local funds may serve as appointive members of the State Board of Education. No spouse of any public school employee paid from State or local funds and no spouse of any employee of the Department of Public Instruction may serve as an appointive member of the State Board of Education. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed by the Governor and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2; 1981, c. 423, s. 1; 1985, c. 479, s. 36; 1989, c. 46; 2009-2, s. 1.)

Cross References. — As to establishment of the School-Based Child and Family Team Initiative, see G.S. 143B-366.

Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission. — Session Laws 2009-339 preamble and ss. 1 through 11, provide: "Whereas, the Innovative Education Initiatives Act became law in 2003; and

"Whereas, as a result of this act, 52 Early and Middle College programs have been developed as a collaboration between the public schools, the community colleges, and private business; and

"Whereas, these schools have generally evidenced a decrease in their dropout rates and, as a result, have won national awards; and

"Whereas, North Carolina has seven identified economic development regions, each with its own challenges in today's changing and demanding job market; and

"Whereas, North Carolina has numerous innovative public and private programs based in Science, Technology, Engineering, and Mathematics (STEM); and

"Whereas, to be efficient with the taxpayers' dollars, to continue to increase the graduation rate, and to prepare our students for twenty-first century jobs, it would be beneficial to map these innovative education programs, including the development of additional Early and Middle College programs and STEM programs, and other public and private education programs that have instructional programs that prepare students to meet the particular employment and workforce preparation needs of the respective economic development regions. In addition, it would be beneficial to develop curriculum frameworks that reflect innovative design principles in some of these schools that would address both regional and statewide employment needs; and

"Whereas, the United States Department of Education has identified 16 career clusters as a tool to connect career technical education (CTE) to education, workforce preparation, and economic development; and

"Whereas, the North Carolina STEM Community Collaborative/MCNC is supporting the creation of a replicable community visioning process, engaging business, policy, education, and community stakeholders in mapping their local needs and producing a plan for sustainable, local education innovation based in science, technology, engineering, and mathematics; and

"Whereas, it would be beneficial to position each region and the State to compete in the regional, national, and global economy by creating a joint legislative study commission to review the vision plans and overall needs of each economic development region as well as the overall needs of the State; and

"Whereas, the Commission should advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop standard instructional programs for twenty-first century career paths in accordance with the Early and Middle College and STEM models and study the implementation of pilot programs in these respective regions that will best suit the potential of the region and better prepare students for the increased academic demands of a global economy; Now, therefore,

"The General Assembly of North Carolina enacts:

"SECTION 1. There is established the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission (Commission).

"SECTION 2.(a) The Commission shall consist of the following members:

"(1) The Lieutenant Governor serving as the Chair.

"(2) Two members appointed by the Governor.

"(3) Eight members appointed by the President Pro Tempore of the Senate, to include:

"a. Three members of the Senate, with one designated to serve as a vice- chair.

"b. A representative of The University of North Carolina.

"c. A representative of the Department of Public Instruction.

"d. A representative of North Carolina's business and industry.

"e. A public school teacher.

"f. An individual with expertise in STEM education.

"(4) Eight members appointed by the Speaker of the House of Representatives, to include:

"a. Three members of the House of Representatives, with one designated to serve as a vice-chair.

"b. A representative of the Community College System.

"c. A representative of the Independent Colleges and Universities.

"d. A representative of the Department of Commerce.

"e. A representative of North Carolina's business and industry.

"f. A representative of North Carolina's school superintendents.

"(5) The Executive Director of the Education Cabinet or the Executive Director's designee, serving ex officio.

"SECTION 2.(b) Members of the Commission shall serve a three-year term, beginning on July 1, 2009. The terms for members of the House of Representatives or the Senate shall end upon the expiration of the members' legislative term.

"SECTION 2.(c) Members shall serve at the pleasure of the appointing authority. Vacancies on the Commission shall be filled by the same appointing authority who made the initial appointment.

"SECTION 2.(d) A vice-chair shall serve as Chair in the absence of the Chair.

"SECTION 3.(a) The Commission shall study issues related to economic development through innovative schools where instructional program frameworks reflect the high academic standards required of students to be successful as they transition to postsecondary education and future careers, including:

"(1) Technical and vocational needs of each economic development region;

"(2) Employment and workforce preparation needs of the State as a whole;

"(3) The economic vision plans for each economic development region;

"(4) The shortage of highly skilled employees such as technicians, teachers, allied health practitioners, including, but not limited to, nurses and doctors, scientists, and engineers;

"(5) The 16 career clusters identified by the United States Department of Education as well as additional career paths;

"(6) The development of a framework for assessment of readiness of a community or region to support twenty-first century economic demands of business and industry development and the scaling of innovative local programs to impact broader numbers of individuals in communities around the State; and

"(7) Any other matter pertinent to connecting career technical education to education, workforce preparation, and economic development through innovative schools.

"SECTION 3.(b) The Chair shall appoint from the Commission's membership a North Carolina STEM Community Collaborative Advisory Committee (Community Collaborative) to ensure that the efforts of the Commission and the Community Collaborative are aligned and that the Commission is informed of the Community Collaborative's activities and that the Community Collaborative is informed of the Commission's activities.

"SECTION 4. The Commission shall prioritize and customize the career clusters and identify additional career paths and report its recommendations to the State Board of Education. The Commission shall (i) advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop, incrementally, standard instructional programs for career clusters and their corresponding career paths in accordance with the

Early and Middle College model, and (ii) study the implementation of pilot programs in the seven economic development regions of the State that will best suit the needs of the regions and prepare students for the increased academic demands of a global economy.

"SECTION 5. The Commission shall also study issues related to economic growth by the creation of measures and metrics which define the readiness of a community to deliver to all stakeholders the services that equip the workforce to be competitive in a STEM-intensive economy, including ensuring that students throughout the education pipeline gain the skills learned from science, technology, engineering, math, and other rigorous subjects. As a part of its study, the Commission may examine issues related to:

"(1) A replicable and perpetual model for aligning efforts of local business, industry, policy, and education stakeholders in community engagement for visioning student-centered learning;

"(2) The documentation and study of the innovative education programs critical for communities to be competitive in the STEM environment in the twenty-first century;

"(3) A framework to network these economic development regions, aligning State, regional, and external investment in replicable innovation;

"(4) Opportunities to leverage existing research, programs such as the College Foundation of North Carolina Bridges program, and other resources to maximize the impact of these existing resources and assets to avoid duplication, to achieve greater economies of scale, and to broaden the impact of these efforts by the most cost-effective means possible; and

"(5) Any other topics deemed relevant by the Commission.

"SECTION 6.(a) The Commission shall, within the first eight months of its creation, meet at least once in each economic development region. The Commission may use any and all appropriate technology to enhance participation in its meetings and to reduce the costs incurred by the Commission. The Chair may appoint a volunteer advisory committee in each economic development region to assist the Commission in its work.

"SECTION 6.(b) The Commission shall work closely with the business community across the State and shall encourage businesses and business leaders to partner with the Commission on the work of the Commission and to establish public-private partnerships with the pilot schools.

"SECTION 6.(c) The University of North Carolina shall inform the Commission on the work of its constituent institutions on the elementary and middle school fundamental building blocks for secondary STEM success. This work should be a consideration for all communities which engage in visioning student-centered learning. The Commission shall also be informed by The University of North Carolina on its North Carolina STEM program inventory and how to make this inventory available to communities which engage in visioning student-centered learning.

"SECTION 7. The Commission shall meet upon the call of the Chair. A quorum of the Commission shall be a majority of its members. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building. G.S. 120-19 applies to requests made on behalf of the Commission.

"SECTION 8.(a) The expenses of the Commission shall be paid by the Legislative Services Commission from available funds appropriated to the General Assembly. The Legislative Services Commission may accept grants on behalf of the State to be used to help defray the expenses of the Commission. Any application and receipt of grants under this section shall be subject to the requirements of Chapters 120C and 138A of the General Statutes, and Article 14 of Chapter 120 of the General Statutes. Reasonable expenses of the Commission may include the cost of travel on a learning tour of innovative schools both inside and out of the State. Any grants funds received under this section shall be held by the General Assembly in a non-reverting special fund known as the JOBS Commission Fund to be administered by the Legislative Services Commission for expenses of the Commission. Any funds remaining in the JOBS Commission Fund shall transfer to the reserves of the General Assembly upon termination of the Commission.

"SECTION 8.(b) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Individual expenses of five thousand dollars ($5,000) or less, including per diem, travel, and subsistence expenses of members of the Commission, shall be paid upon authorization of the Chair of the Commission. Individual expenses in excess of five thousand dollars ($5,000) shall be paid upon written approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

"SECTION 8.(c) With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist the Commission in its work during the interims between legislative sessions. The Directors of Legislative Assistants of the House of Representatives and the Senate shall assign clerical staff to the Commission. The Commission may contract for additional professional or consultant services in accordance with G.S. 120-32.02.

"SECTION 9.(a) The Commission shall make an initial report of the results of its study to the State Board of Education by March 1, 2010. In its report, the Commission shall recommend at least four of the 16 career clusters identified by the United States Department of Education that will best and most broadly serve the immediate employment and workforce preparation needs of the State and the respective regions. Upon consideration of the recommendations of the Commission, the State Board of Education, in consultation with the Department of Public Instruction, shall develop the instructional programs for at least four career clusters and shall implement at least one JOBS Early or Middle College in each of the economic development regions beginning with the 2010-2011 school year where feasible, and in all other regions by the 2011-2012 school year.

"SECTION 9.(b) The Commission may make recommendations resulting from its study to the State Board of Education and the Department of Public Instruction from time to time in its discretion.

"SECTION 9.(c) The Commission shall monitor the implementation of its recommendations to the State Board of Education and the Department of Public Instruction and shall report and recommend to the General Assembly any legislation necessary to implement its recommendations.

"SECTION 9.(d) The Commission shall make an interim report of the results of its study and its recommendations, including any proposed legislation, to the Joint Legislative Education Oversight Committee and the 2010 Regular Session of the 2009 General Assembly no later than May 15, 2010, and to the Joint Legislative Education Oversight Committee and the 2011 Regular Session of the 2011 General Assembly no later than February 1, 2011, and a final report to the Joint Legislative Education Oversight Committee and the 2012 Regular Session of the 2011 General Assembly no later than May 15, 2012. The Commission shall file a copy of each Commission report with the President Pro Tempore of the Senate's office, the Speaker of the House of Representatives' office, and the Legislative Library.

"SECTION 10. The Commission shall terminate on June 30, 2012, or upon the filing of its final report in accordance with Section 9.(d) of this act.

"SECTION 11. This act is effective when it becomes law."

Effect of Amendments. — Session Laws 2009-2, s. 1, effective March 4, 2009, in the second sentence of the first undesignated paragraph substituted "two public school employees" for "one public school employee," substituted "appointive members" for "an appointive member," and substituted "and no spouse of any employee of the Department of Public Instructions" for "and no employee of the Department of Public Instruction or his spouse"; near the middle of the second undesignated paragraph substituted "by the Governor" for "by him."

OPINIONS OF ATTORNEY GENERAL

Appointment of State Employees to Board. — The Governor has the authority to appoint any number of state employees to the State Board of Education and the state employees so appointed and confirmed have the right to serve on the board, provided they are not employees of the Department of Public Instruction. See opinion of Attorney General to Franklin E. Freeman, Jr., Senior Assistant for Governmental Affairs, Office of the Governor, 2001 N.C. AG LEXIS 16 (6/27/2001).

§ 115C-11. Organization and internal procedures of Board.

(a) Presiding Officer. — The State Board of Education shall elect from its membership a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice-chairman shall preside; in the absence of both the chairman and the vice-chairman, the Board shall name one of its own members as chairman pro tempore.

(a1) Student advisors. — The Governor is hereby authorized to appoint two high school students who are enrolled in the public schools of North Carolina as advisors to the State Board of Education. The student advisors shall participate in State Board deliberations in an advisory capacity only. The State

Board may, in its discretion, exclude the student advisors from executive sessions.

The Governor shall make initial appointments of student advisors to the State Board as follows:

(1) One high school junior shall be appointed for a two-year term beginning September 1, 1986, and expiring June 14, 1988; and

(2) One high school senior shall be appointed for a one-year term beginning September 1, 1986, and expiring June 14, 1987. When an initial or subsequent term expires, the Governor shall appoint a high school junior for a two-year term beginning June 15 of that year. If a student advisor is no longer enrolled in the public schools of North Carolina or if a vacancy otherwise occurs, the Governor shall appoint a student advisor for the remainder of the unexpired term.

Student advisors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(a2) State Teacher of the Year Advisor. — Each State Teacher of the Year, as designated by the Department of Public Instruction, shall serve ex officio as advisor to the State Board of Education. Each State Teacher of the Year shall begin service as advisory member to the State Board at the commencement of the teacher's term as State Teacher of the Year and shall serve for two years. The State Teachers of the Year shall participate in State Board deliberations and committee meetings in an advisory capacity only. The State Board may, in its discretion, exclude the State Teachers of the Year from executive sessions.

In the event a vacancy occurs in the State Teacher of the Year's advisory position, the teacher who was next runner-up to that State Teacher of the Year shall serve as the advisory member to the Board for the remainder of the unexpired term. The State Teacher of the Year advisors to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(a3) Superintendent Advisor. — The Governor shall appoint a superintendent of a local school administrative unit as an advisor to the State Board of Education. The superintendent advisor shall serve for a term of one year. The superintendent advisor shall participate in State Board deliberations and committee meetings in an advisory capacity only. The State Board may, in its discretion, exclude the superintendent advisor from executive sessions.

In the event that a superintendent advisor ceases to be a superintendent in a local school administrative unit, the position of superintendent advisor shall be deemed vacant. In the event that a vacancy occurs in the position for whatever reason, the Governor shall appoint a superintendent advisor for the remainder of the unexpired term. The superintendent advisor to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(a4) State Principal of the Year Advisor. — Each State Principal of the Year, as designated by the Department of Public Instruction, shall serve ex officio as an advisor to the State Board of Education. Each State Principal of the Year shall begin service as an advisory member to the State Board at the commencement of the principal's term as State Principal of the Year and shall serve for one year. The State Principal of the Year shall participate in State Board deliberations and committee meetings in an advisory capacity only. The State Board may, in its discretion, exclude the State Principal of the Year from executive sessions.

In the event a vacancy occurs in the State Principal of the Year's advisory position, the principal who was next runner-up to that State Principal of the Year shall serve as the advisory member to the State Board for the remainder of the unexpired term. The State Principal of the Year advisor to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(a5) Local Board of Education Advisor. — The current Raleigh Dingman Award winner shall serve as an advisor to the State Board of Education. The local board of education advisor shall serve for a term of one year. The local board of education advisor shall participate in State Board deliberations and committee meetings in an advisory capacity only. The State Board may, in its discretion, exclude the local board of education advisor from executive sessions.

In the event that the Raleigh Dingman Award winner ceases to be a local board of education member or notifies the State Board of Education that he or she is unable to fulfill his or her duties as a local board of education advisor member, the position of local board of education member shall be deemed vacant. In the event that a vacancy occurs in the position for whatever reason, the President of the North Carolina School Boards Association shall serve as the advisory member to the State Board for the remainder of the unexpired term. The local board of education advisor to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b) Regular Meetings of Board. — The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

(b1) Annual meeting with the State Board of Community Colleges and the Board of Governors of The University of North Carolina. The State Board of Education shall meet with the State Board of Community Colleges and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State. The meeting in 1987 and every three years thereafter shall be hosted by the University Board of Governors, the meeting in 1988 and every three years thereafter shall be hosted by the State Board of Education, and the meeting in 1989 and every three years thereafter shall be hosted by the State Board of Community Colleges.

(c) Special Meetings. — Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman: Provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post-office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

(d) Voting. — No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion.

(e) Voting on Adoption of Textbooks. — A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(f) Committees. — The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall with approval of the majority of the Board appoint members to the several committees authorized by the Board and to any additional committees which the chairman may deem to be appropriate.

(g) Record of Proceedings. — All of the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection.

(h) Rules and Regulations. — The Board shall adopt reasonable rules and regulations not inconsistent herewith, to govern its proceedings which the Board may amend from time to time, which rules and regulations shall become effective when filed as provided by law: Provided, however, a motion to suspend the rules so adopted shall require a consent of two-thirds of the members. The rules and regulations shall include, but not be limited to, clearly defined procedures for electing the officers of the State Board referred to in G.S. 115C-11(a), fixing the term of said officers, specifying how the voting shall be carried out, and establishing a date when the first election shall be held. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19; 1971, c. 704, s. 3; 1975, c. 699, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 991, s. 1; 1987 (Reg. Sess., 1988), c. 1102, s. 1; 1989, c. 720; 2003-306, s. 1.)

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(1) Financial Powers. — The financial powers of the Board are set forth in Article 30 of this Chapter.

(1a) To Submit a Budget Request to the Director of the Budget. — The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143C-3-3. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.

(5) Apportionment of Funds. — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.

(7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an "A" certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an "A" certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

(9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(9a), (9b) Repealed by Session Laws 2005-458, s. 1, effective October 2, 2005.

(9c) Power to develop content standards and exit standards. — The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina. The Board may develop exit standards that will be required for high school graduation.

The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of

The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities.

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. — The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. — The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. — The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education

as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to provide for school transportation programs. The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and

regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.

d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised Uniform Education Reporting System shall be implemented beginning with the 1999-2000 school year.

(19) Duty to Identify Required Reports and to Eliminate Unnecessary Reports and Paperwork. — Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

The State Board of Education shall adopt policies to ensure that local school administrative units are not required by the State Board of Education, the State Superintendent, or the Department of Public Instruction staff to (i) provide information that is already available on the student information management system or housed within the Department of Public Instruction; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; or (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Notwithstanding the foregoing, the State Board may require information available on its student information management system or require the same information twice if the State Board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. — Pursuant to G.S. 120-30.9G the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. — The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board. The State Board shall submit its report on acts of violence in the public schools to the Joint Legislative Education Oversight Committee by March 15 of each year.

(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. — The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local board of education to report the information to the State Board in a standard format adopted by the State Board.

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. — The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Standards for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. — The State Board of Education shall adopt standards for assigning students to alternative learning programs. These standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

(25) Duty to Report to Joint Legislative Education Oversight Committee. — Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. — The State Board of Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under G.S. 116-11(12a).

(27) Reporting Dropout Rates, Suspensions, Expulsions, and Alternative Placements. — The State Board shall report by March 15 of each year to the Joint Legislative Education Oversight Committee on the numbers of students who have dropped out of school, been suspended, been expelled, or been placed in an alternative program. The data shall be reported in a disaggregated manner and be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The

Board shall maintain a separate record of the number of students who are expelled from school.

(27a) Reducing School Dropout Rates. — The State Board of Education shall develop a statewide plan to improve the State's tracking of dropout data so that accurate and useful comparisons can be made over time. The plan shall include, at a minimum, how dropouts are counted and the methodology for calculating the dropout rate, the ability to track students movements among schools and districts, and the ability to provide information on who drops out and why.

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. — The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.

c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:
  1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
  2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

  These rules shall apply to public schools and charter schools.

d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.

e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates.

(29) To issue special high school diplomas to veterans of World War II Korea, and Vietnam. — The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of

World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas.

(30) Duty to Adopt Model Guidelines and Policies for the Establishment of Local Task Forces on Closing the Academic Achievement Gap. — The State Board shall adopt a Model for local school administrative units to use as a guideline to establish local task forces on closing the academic achievement gap at the discretion of the local board. The purpose of each task force is to advise and work with its local board of education and administration on closing the gap in academic achievement and on developing a collaborative plan for achieving that goal. The State Board shall consider the recommendations of the Commission on Improving the Academic Achievement of Minority and At-Risk Students to the 2001 Session of the General Assembly in establishing its guidelines.

(30a) Duty to Assist Schools in Meeting Adequate Yearly Progress. — The State Board of Education shall:

a. Identify which schools are meeting adequate yearly progress with subgroups as specified in the No Child Left Behind Act of 2001;

b. Study the instructional, administrative, and fiscal practices and policies employed by the schools selected by the State Board of Education that are meeting adequate yearly progress specified in the No Child Left Behind Act of 2001;

c. Create assistance models for each subgroup based on the practices and policies used in schools that are meeting adequate yearly progress. The schools of education at the constituent institutions of The University of North Carolina, in collaboration with the University of North Carolina Center for School Leadership Development, shall assist the State Board of Education in developing these models; and

d. Offer technical assistance based on these assistance models to local school administrative units not meeting adequate yearly progress, giving priority to those local school administrative units with high concentrations of schools that are not meeting adequate yearly progress. The State Board of Education shall determine the number of local school administrative units that can be served effectively in the first two years. This technical assistance shall include peer assistance and professional development by teachers, support personnel, and administrators in schools with subgroups that are meeting adequate yearly progress.

(31) To Adopt Guidelines for Individual Diabetes Care Plans. — The State Board shall adopt guidelines for the development and implementation of individual diabetes care plans. The State Board shall consult with the North Carolina Diabetes Advisory Council established by the Department of Health and Human Services in the development of these guidelines. The State Board also shall consult with local school administrative unit employees who have been designated as responsible for coordinating their individual unit's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board shall refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in the school and day care setting and shall consider recent resolutions by the United States Department of Education's Office of Civil Rights of investigations into complaints alleging discrimination against students with diabetes.

The guidelines adopted by the State Board shall include:

a. Procedures for the development of an individual diabetes care plan at the written request of the student's parent or guardian, and involving the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, the school nurse if available, and other appropriate school personnel.

b. Procedures for regular review of an individual care plan.

c. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management, and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student. The State Board shall ensure that the information and allowable actions included in a diabetes care plan as required in this subdivision meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting.

d. Information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

The State Board shall ensure that these guidelines are updated as necessary and shall ensure that the guidelines and any subsequent changes are published and disseminated to local school administrative units.

(32) Duty to Encourage Early Entry of Motivated Students into Four-Year College Programs. — The State Board of Education, in cooperation with the Education Cabinet, shall work with local school administrative units, the constituent institutions of The University of North Carolina, local community colleges, and private colleges and universities to (i) encourage early entry of motivated students into four-year college programs and to (ii) ensure that there are opportunities at four-year institutions for academically talented high school students to get an early start on college coursework, either at nearby institutions or through distance learning.

The State Board of Education shall also adopt policies directing school guidance counselors to make ninth grade students aware of the potential to complete the high school courses required for college entry in a three-year period.

(33) Duty to Develop Recommended Programs for Use in Schools on Memorial Day. — The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall recognize the significance of Memorial Day.

(34) Duty to Protect the Health of School-Age Children From Toxicants at School. — The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.

b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.
c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.
d. Establish guidelines for Integrated Pest Management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.
e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds.

(35) To encourage local boards of education to enter into agreements regarding the joint use of facilities for physical activity. — The State Board of Education shall encourage local boards of education to enter into agreements with local governments and other entities regarding the joint use of their facilities for physical activity. The agreements should delineate opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability.

(36) Duty to charge tuition for the Governor's School of North Carolina. — The State Board of Education shall implement a five-hundred-dollar ($500.00) tuition charge for students attending the Governor's School of North Carolina. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a); 1997-18, s. 15(a), (c)-(e); 1997-221, s. 12(a); 1997-239, s. 1; 1997-443, s. 8.27(a), (e); 1997-443, s. 8.29(o), (u); 1997-507, s. 3; 1998-153, s. 16(b); 1998-212, ss. 9.16(a), 9.23; 1999-237, s. 8.25(d); 1999-243, s. 5; 1999-397, s. 3; 2001-86, s. 1; 2001-151, s. 1; 2001-424, ss. 28.30(e), (f), 31.4(a); 2002-103, s. 1; 2002-126, s. 7.15; 2002-159, s. 63; 2002-178, s. 1(a); 2003-251, s. 1; 2003-419, s. 1; 2005-155, s. 1; 2005-276, ss. 7.18, 9.34(a); 2005-446, s. 1; 2005-458, ss. 1, 2; 2006-75, s. 1; 2006-143, s. 1; 2006-203, s. 30; 2006-260, s. 1; 2009-305, s. 4; 2009-334, s. 1; 2009-451, s. 7.39(a).)

Local Modification. — Dare: 2006-23, s. 1; Hyde: 2006-23, s. 1; Martin: 2006-23, s. 1; Tyrrell: 2006-23, s. 1; Washington: 2006-23, s. 1.

Cross References. — As to sick leave for public school employees, see G.S. 115C-336. As to the purpose of The Excellent Schools Act, Session Laws 1997-221, see the Editor's Note under G.S. 115C-105.38A.

Study on Admissions Placement, and Advanced Placement. — Session Laws 2001-312, ss. 1(a) to (c), provide for The Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, to study the measures used by the constituent institutions to make admissions, placement, and advanced placement decisions regarding incoming freshmen and to assess the various uses made of those measures and the validity of those measures with regard to a student's academic performance and as predictors of a student's future academic performance, as well as whether other alternative measures may be equally valid or more accurate as indicators of a student's academic performance. In the study, particular consideration is to be given to whether or not to eliminate, continue, or change the emphasis placed on the Scholastic Aptitude Test (SAT) and ACT Assessment for North Carolina students as a mandatory university admissions measure. The study is also to review incorporating the State's testing program into admissions, placement, and advanced placement decisions. Based on its findings, the Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, is authorized to develop recommendations to improve the measures used to assess a student's academic performance, to adopt alternative measures, or to use various combinations of both to determine more accurately a student's academic knowledge and performance. The Board of Governors may make an interim report to the Joint Legislative Education Oversight Committee no later than March 1, 2002, and shall submit a final report by December 1, 2003. It is recommended that the study continue beyond the final report date.

Professional Development for Public School Professionals. — Session Laws 2001-424, ss. 31.4(c) to (e), as amended by Session Laws 2002-126, s. 7.17(h), provides: "(c) The Joint Legislative Education Oversight Committee shall hire an independent consultant to study and make recommendations regarding professional development for public school professionals in North Carolina. The consultant shall study:

"(1) The professional development programs administered under the UNC Center for School Leadership Development with regard to their mission, governance structure, efficiency, and objectively measurable effectiveness in increasing student achievement.

"(2) The feasibility and merits of consolidating and reducing the number of professional development programs.

"(3) The possibility of regionalizing professional development programs and using a cooperative arrangement between higher educational institutions and community colleges in a region to achieve the goal.

"(4) The professional development support offered by the Department of Public Instruction.

"(5) The use of professional development funds allocated to local school administrative units and individual schools.

"(6) National research regarding effective methods for delivering professional development that is shown to improve student achievement.

"The consultant shall report these findings to the Joint Legislative Education Oversight Committee and also shall make recommendations regarding how existing State funds should be utilized to provide effective and efficient professional development for public school professionals.

"(d) The Joint Legislative Education Oversight Committee shall review the consultant's findings and recommendations and shall submit to the 2003 General Assembly recommendations to streamline, reorganize, and improve the delivery of professional development for public school professionals. The recommendations may address revisions to program governance and mission, reallocation of funds, methods of program delivery, and methods to institute ongoing program evaluation.

"(e) The Joint Legislative Education Oversight Committee shall review the reports that are required to be made to the Committee. The purpose of the review is to determine which reports must include information that is research-based, proven in practice, and designed for data-driven research. The Committee may make recommendations for changes in these reports based upon the Committee's findings."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Healthful School Food Choices/Pilot Program. — Session Laws 2004-124, ss. 7.17(a) and (b), provide: "The State Board of Education, with he advice and assistance of The North Carolina School Food Service Association and the Academy of Family Physicians, shall develop and implement a pilot program to support the efforts of local school administrative units to provide only healthful, nutritious food choices to students. The State Board of Education shall select up to eight local school administrative units to participate in the pilot program and shall set standards for the food choices offered to students. In selecting the eight pilot units, the State Board shall give priority to those units that volunteer to be a pilot. The pilots shall be distributed geographically throughout the State.

"For the 2004-2005 school year, pilot units shall implement the program in elementary schools.

"If, at the end of the 2004-2005 school year, the State Board of Education finds that a pilot unit experienced a decrease in food service revenues because students opted not to purchase the healthful, nutritious food choices offered by the school food service, the State Board shall reimburse the unit for that decrease in revenues."

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, s. 9.3, provides for the development and implementation of a Joint Initiative for Teacher Education and Recruitment. See note at G.S. 115C-295.

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See notes under G.S. 115C-105.20.

Students with Limited English Proficiency. — Session Laws 2007-323, s. 7.9(a), (b), provides: "(a) The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

"The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2.5%) of the average daily membership of the unit or charter school. For the portion of the funds that is allocated on the basis of the number of identified students, the maximum number of identified students for whom a unit or charter school receives funds shall not exceed ten and six-tenths percent (10.6%) of its average daily membership.

"Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, tutors, textbooks, classroom materials/instructional supplies/equipment, transportation costs, and staff development of teachers for students with limited English proficiency.

"A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

"(b) The Department of Public Instruction shall prepare a current head count of the number of students classified with limited English proficiency by December 1 of each year.

"Students in the head count shall be assessed at least once every three years to determine their level of English proficiency. A student who scores 'superior' on the standard English language proficiency assessment instrument used in this State shall not be included in the head count of students with limited English proficiency."

For similar prior provisions, see Session Laws 2003-284, s. 7.15 and Session Laws 2005-276, s. 7.9(a), (b).

Plan and Funding for a Virtual High School. — Session Laws 2005-276, s. 7.41(a)-(e), provides: "(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

"(b) As used in this section, 'E-learning' is electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

"(c) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

"(d) The State Board of Education shall use funds appropriated for a virtual high school to establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year.

"The State Board of Education shall include in the pilot program instruction on personal financial literacy. This instruction shall be designed to equip students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances. The components of instruction shall include, at a minimum, consumer financial education, personal finance, and personal credit.

"(e) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year."

NC Virtual Public School Program. — Session Laws 2009-451, s. 7.9(a)-(g), provides:

"(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

"The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

"The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"(e) The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

"(1) The General Fund appropriation for NCVPS;

"(2) Available American Recovery and Reinvestment Act of 2009 funds; and

"(3) Up to six million dollars ($6,000,000) from the School Technology appropriation.

"(f) NCVPS shall only provide high school courses.

"(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

"If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education."

For similar prior provisions, see Session Laws 2005-276, s. 7.41(a)-(e), 2006-66, s. 7.16(a)-(e), and Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a).

Small Specialty High Schools Pilot Program. — Session Laws 2005-276, ss. 7.52(a) and (b), provide: "(a) Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006."

Study and Report on School Counselor's Role in Providing Dropout Prevention and Intervention Services. — Session Laws 2006-176, ss. 1, 2, provide: "1. Research shows that school counselors can provide effective services to students that encourage them to stay in school, succeed in school, and graduate from high school. Research also shows that middle school is a critical time for students who are at risk of dropping out of school. The General Assembly currently provides funding that local school administrative units may use to hire school counselors; it is unclear, however, what role school counselors play in providing effective and efficient dropout prevention and intervention services to students in middle and high school. The General Assembly needs additional information to determine whether adjustments should be made in funding for school counselors or assignment of duties to school counselors; therefore, the State Board of Education shall report the following information to the Joint Legislative Education Oversight Committee prior to March 15, 2007.

"(1) The counselor-to-student ratio in schools with a sixth grade or higher grade;

"(2) The source of funds used for each of these counselors;

"(3) A review and analysis of the counselors' primary duties by school;

"(4) A summary and description of school-based dropout prevention and intervention services provided directly to students in the sixth grade and higher grades, including the role of school counselors in providing the services; and

"(5) The number of school counselors and other individuals per local school administrative unit whose primary responsibility is to provide school-based dropout prevention and intervention services and the percentage of their time spent providing these services.

"2. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to November 1, 2007, on the implementation of State Board Policy QP-C-012, Policy Delineating the Job Description and Performance Criteria for School Counselors."

Editor's Note. — G.S. 115C-64.4, referred to in subdivision (20), has been repealed.

The section above was amended by Session Laws 1999-237, s. 8.25(d), Session Laws 1999-243, s. 5, and Session Laws 1999-397, s. 3, in the coded bill drafting format provided by G.S. 120-20.1. The amendment to subdivision (24) by Session Laws 1999-397, s. 3, included paragraphs in a different order. Subdivision (24) has been set out in the form above at the direction of the Revisor of Statutes.

Subdivision (28) was so designated at the direction of the Reviser of Statutes, the designation in Session Laws 1997-507, s. 3., having been subdivision (27).

Session Laws 1985, c. 479, which rewrote paragraph (9)c of this section, provided in ss. 55(c)(8) and (c)(9):

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 1997-507, s. 6, effective September 17, 1997, provides that the State Board of Education shall initiate and coordinate meetings in order to develop coordinated rules, policies, and guidelines needed to implement the act.

Session Laws 1999-243, s. 10, provides that the State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Session Laws 1999-243, s. 11, provides, in part, that the act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. The act applies only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

Session Laws 2002-103, s. 4, provides, in part, that the guidelines under Section 1 of the act shall be adopted no later than January 15, 2003, and shall be implemented under Section 2 of the act beginning with the 2003-2004 school year.

Session Laws 2003-419, s. 2, provides: "The State Board of Education and the Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by June 15, 2004, and December 15, 2005, on the implementation of Section 1 of this act. The report shall include:

"(1) The number and locations of schools meeting adequate yearly progress with the subgroups specified in the No Child Left Behind Act of 2001;

"(2) The assistance models developed for each subgroup;

"(3) Technical assistance provided to a local school administrative unit or a school; and

"(4) The need for additional resources to implement this act on a statewide basis."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-198, s. 4, provides: "The State Board of Education and the State Board of Community Colleges shall submit annually to the Joint Legislative Education Oversight Committee a report on the community college program of study for lateral entry teachers established under this act. The initial report is due no later than April 1, 2006. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should continue and, if so, must include the reasons for its continuation and any recommended legislative changes needed to enhance the program."

Session Laws 2005-271, s. 1, provides: "The State Board of Education shall identify research-based methods to reduce the dropout rate and the number of suspended students, especially in high-poverty schools with diverse student populations. As part of its study, the State Board shall review the research for best practices, effective policies, and model programs in areas such as (i) academic rigor in the curriculum, (ii) early identification of at-risk students, (iii) effective supplemental services for at-risk students, (iv) school size, (v) school climate, and (vi) adolescent literacy programs, as they relate to a reduction in the dropout rate and the number of suspended students.

"The State Board shall report its findings to the Joint Legislative Education Oversight Committee by January 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-276, ss. 7.61(a) and (b), provide: "(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

"(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

Subdivision (24), as amended by Session Laws 2005-446, s. 1, effective September 29, 2005, is applicable to any new alternative learning program or alternative school to be implemented beginning with the 2006-2007 school year.

Session Laws 2005-446, s. 4, provides: "Before implementing success centers or any other alternative learning program or alternative school in New Hanover County, the New Hanover Board of Education shall comply with G.S. 115C-105.47A established in Section 2 of this act. The State Board of Education shall submit to the Joint Legislative Education Oversight Committee a copy of the proposal submitted by the New Hanover Board of Education and a copy of any recommendations made by the State Board."

Session Laws 2005-446, s. 5, provides: "Nothing in this act requires the North Carolina General Assembly to appropriate funds for the implementation of alternative learning programs or alternative schools."

Session Laws 2005-457, s. 2, provides: "The State Board of Education may use 'Eat Smart: North Carolina's Recommended Standards for All Foods Available in School' and the 'United States Dietary Guidelines' as references for establishing the nutrition standards under Section 1 of this act. In addition to the elementary school pilots established by Section 7.17 of S.L. 2004-124, the nutrition standards will also be piloted prior to statewide implementation in a minimum of eight middle schools and eight high schools at a time to be determined by the State Board of Education. The pilots shall be conducted in a manner that will hold the child nutrition program of a participating local school administrative unit financially harmless for its participation in the pilot project. It shall be the responsibility of the Child Nutrition Services Section of the Department of Public Instruction to oversee the pilot project, collect data from the pilots, interpret the data, and develop written guidance based on the outcomes of the pilots. The Child Nutrition Services Section of the Department of Public Instruction shall modify the nutrition standards as needed based on several criteria, including, but not limited to, the results of the pilot projects, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages. The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. The Child Nutrition Services Section of the Department of Public Instruction shall report annually on the progress of each local school administrative unit to the State

Board of Education and to the Joint Legislative Education Oversight Committee."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-143, s. 1, added a new subdivision (33). It has been redesignated as subdivision (34) at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable for this act remain applicable to those prosecutions."

Session Laws 2006-143, s. 3 provides: "Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees."

Session Laws 2007-277, s. 1, provides: "(a) The State Board of Education, in cooperation with The University of North Carolina Board of Governors and the State Board of Community Colleges, shall develop a framework for a Reaching One's Potential for Excellence (ROPE) Scholars Program. The purpose of the ROPE Scholars Pilot Program shall be (i) to strengthen middle grades education in order to provide students with the opportunity to graduate from high school with the core academic skills needed for postsecondary education and high-skilled employment, and (ii) thereby to reduce the high school dropout rate, increase high school and college graduation rates, and decrease the need for remediation in institutions of higher education.

"The framework for the ROPE Scholars Program shall require participating schools to have or be afforded access to high speed, broadband Internet resources and to use SAS EVAAS (Education Value Added Assessment System) or a comparable software system to track student academic progress over time.

"(b) It is the intent of the ROPE Scholars Program to:

"(1) Reduce class size to one teacher to every 17 students;

"(2) Provide annual salary incentives of up to five thousand dollars ($5,000) to teachers certified in any high-need subject matter area or to support personnel;

"(3) Provide a coordinator position at each participating school to assist in community and parental support;

"(4) Encourage students participating in the program, through agreements executed between the local school administrative unit and students and their parents or guardians, to:

"a. Maintain a ninety-five percent (95%) attendance rate each year;

"b. Achieve a minimum of a "B" average;

"c. Take the PSAT and the SAT or the ACT and achieve an adequate score, as determined by the State Board of Education;

"d. Meet the standards for admission established by the Board of Governors of The University of North Carolina;

"e. Engage in community service work each month during the school year for the number of hours determined by the State Board of Education; and

"f. Evidence good character by not engaging in unlawful conduct.

"(5) Provide students who successfully participate in the program with college scholarships.

"(c) The State Board of Education shall develop a competitive process through which local school administrative units may apply to participate in the pilot program. The State Board shall select three units from different geographic areas of the State, one of which shall be urban and one of which shall be rural. The Program shall be implemented beginning with the 2009-2010 school year.

"(d) The State Board of Education shall develop a process to evaluate the effectiveness of the Program.

"(e) The State Board of Education shall deliver a draft proposed framework to the Joint Legislative Education Oversight Committee by October 15, 2007, and a final proposal to the same committee by December 15, 2007. The report shall include the cost of implementing the pilot program and shall indicate the State laws, rules, and policies that would preclude the implementation of the pilot."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-409, s. 1, provides: "The State Board of Education shall adopt a policy that requires:

"(1) Teachers of grades kindergarten through eight to take three renewal credits in their academic subject areas, including strategies to teach those subjects, during each five-year license renewal cycle and

"(2) Teachers in grades nine through twelve to take three credits in their academic subject areas, including strategies to teach those subjects, during each five-year license renewal cycle.

"For teachers who are in the fourth or fifth year of their current five-year license renewal cycle, this policy shall apply beginning with the first year of their next five-year license renewal cycle. The State Board may provide for exceptions to this policy for teachers seeking certification or renewal of certification by the National Board for Professional Teaching Standards."

Session Laws 2007-445, s. 1(a)-(c) provides: "(a) The State Board of Education shall designate schools which meet two or more of the following criteria as high-need schools:

"(1) More than forty-five percent (45%) of students perform at Level 1 or Level 2 on end-of-grade or end-of-course tests,

"(2) Teacher turnover rate is greater than twenty-five percent (25%), or

"(3) More than eighty percent (80%) of students qualify for free or reduced-price lunches.

"(b) Beginning with the 2008-2009 school year, to ensure that the schools designated as high-need schools by the State Board of Education have the high quality staff and the additional support they need, the following modifications to law, policy, or both shall apply:

"(1) National Board Certified Teachers who serve as mentors, literacy coaches, or in other nonadministrative instructional leadership positions at these schools shall retain the twelve percent (12%) salary increment for NBPTS certification, notwithstanding G.S. 115C-296.2.

"(2) National Board Certified Teachers, teachers of the year, and other categories of accomplished teachers designated by the State Board of Education shall be given the academic freedom at these schools to use research-based practices in the classroom that go beyond the standard course of study.

"(c) The State Board of Education shall consider the following strategies to ensure that the high-need schools have the high quality staff and the additional support they need and shall report by January 15, 2008, to the Joint Legislative Education Oversight Committee on the cost of implementing for the 2008-2009 fiscal year:

"(1) Adding additional teacher positions at these schools to reduce class size.

"(2) Providing incentives to attract National Board Certified Teachers to these schools.

"(3) Employing teachers at these schools for 11 months. These teachers shall use the extra month of employment for curriculum development, staff development, and planning for the next school year."

Session Laws 2007-453, ss. 1-6, provide: "1. The State Board of Education shall establish a pilot program authorizing the implementation of alternative teacher salary plans. The purpose of the pilot program is to enable local school administrative units to develop and implement new and innovative teacher salary plans that will improve student performance by financially rewarding teachers through performance pay plans, recruiting teachers to the school unit, and recruiting teachers to hard-to-fill positions in specific subject areas. The State Board of Education may select up to five local school administrative units to participate in the pilot program.

"2. Local school administrative units applying to participate in the pilot program shall submit to the State Board of Education a business plan adopted by the local board of education. The business plan shall:

"(1) Explain in detail how additional flexibility regarding the use of salary funds will be used to accomplish specific improvements in student academic performance;

"(2) Describe the alternative methods to be used, the changes to existing practices proposed for the pilot, the incentives or alternative salary structure to be deployed, the expectations for teachers and other employees who participate in the pilot, the anticipated results, and the methods by which teachers and other employees will be evaluated;

"(3) Set out the laws, rules, and policies that must be waived to implement the business plan and the expected outcomes of waiving them;

"(4) Explain how the plan will be administered in a nondiscriminatory manner to assure fair and equitable treatment of all employees and employee groups participating in the pilot;

"(5) Include specific implementation, time line, management, performance, and reporting benchmarks;

"(6) Include statements of how teachers and other stakeholders were included in the development of the plan; and

"(7) Include a statement of how all teachers who will be directly participating in the plan conducted a verifiable secret ballot vote, a statement that the results of the vote were presented to the planning team and local board of education prior to the local board's consideration of the final plan, and a statement that the majority of teachers in the schools participating in the plan and the school administration team have agreed on the design of the plan.

"3. The State Board of Education may grant waivers of laws, rules, and policies to pilot units that are necessary to implement the business plans submitted by the pilot units.

"4. The Department of Public Instruction shall notify all school districts of the availability of the pilot projects and the time lines for submission of the business plans. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee as to the number of districts that have submitted business plans, the types of waivers being requested, and the status of the selection process.

"5. The Financial Services Section of the Department of Public Instruction shall monitor the implementation of the business plans by the pilot units and shall report its findings regularly to the State Board of Education and the Joint Legislative Education Oversight Committee.

"6. The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by June 30, 2010, regarding the effectiveness and performance of all pilots implemented under this act. The report shall include any recommendations regarding the continuation, modification, or elimination of the pilot program."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 30, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-3-3" for "G.S. 143C-6" in subsection (1a).

Session Laws 2009-305, s. 4, effective July 17, 2009, in subdivision (21), added the last sentence, and in subdivision (27), in the first sentence, substituted "by March 15 of each year" for "annually" near the beginning, and deleted "and the Commission on Improving the Academic Achievement of Minority and At-Risk Students" preceding "on the numbers" near the middle.

Session Laws 2009-334, s. 1, effective July 24, 2009, added subdivision (35).

Session Laws 2009-451, s. 7.39(a), effective January 1, 2010, and applicable to sessions of Governor's School beginning after that date, added subdivision (36).

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

CASE NOTES

Editor's Note. *— Some of the cases below were decided under corresponding provisions of former Chapter 115.*

Constitutionality. — No question arises under the Constitution of the United States with reference to the validity of delegation of authority to the State Board of Education. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Construction with Constitutional Mandates. — G.S. 115C-12, especially as a codification of the N.C. Const., Art. IX, § 5, can be read as setting a floor for the quantum of education required. Any other construction of the statute would place G.S. 115C-12 in conflict with G.S. 115C-84.2(a)(1)'s requirement that a school calendar include a minimum of 180 days and 1,000 hours of instruction covering at least 9 calendar months. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Taken together, under G.S. 115C-12, 115C-408, and 115C-451, the powers of the North Carolina Board of Education (BOE) are limited to the control, administration, and disbursement of state and federal moneys, while the state superior courts maintain jurisdiction to hear disputes between charter schools and their local boards of education; thus, a superior court and not the BOE had jurisdiction to consider the claim of a group of charter schools that a local board of education and its superintendent had violated G.S. 115C-238.29H(b) by failing to transfer to the charter schools a pro rata share of the per pupil moneys included in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Delegation of Power. — The principle forbidding delegation of legislative powers without the establishment of appropriate standards applies to the powers conferred upon the Board by statute; it does not apply to the powers conferred upon the Board by the Constitution. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Derivation of Board Powers. — The State Board of Education derives powers both from the Constitution and from acts of the General Assembly. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Applied in Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982); N.C. Motor Coach Ass'n v. N.C. State Bd. of Educ., — F.3d —, 2004 U.S. App. LEXIS 13648 (4th Cir. July 1, 2004).

OPINIONS OF ATTORNEY GENERAL

Salary and Hours of Certified Employees. — N.C. Const., Art. IX, § 5 and G.S. 115C-272(a), 115C-284(c), 115C-296, 115C-315(d) and subsection (9) of this section give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

Hours of Noncertified Employees of Local Board. — The State Board of Education has the power to prescribe the number of hours which noncertified employees of a local board of education must work in order to receive the salary provided by the State and set forth in the State Board's Salary Schedule. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

State is not prohibited from purchasing day care services from day care programs operated by public schools, even though those programs are not licensed by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

§ 115C-12.1. Training of State Board members.

The State Board of Education shall establish minimum training requirements for members of the State Board of Education. All board members shall participate in training programs, as required by the State Board. (1991, c. 689, s. 200(c).)

§ 115C-12.2. Voluntary shared leave.

The State Board of Education, in cooperation with the State Board of Community Colleges and the State Personnel Commission, shall adopt rules and policies to allow any employee at a public school to share leave voluntarily with an immediate family member who is an employee of a public school, community college, or State agency; and with a coworker's immediate family member who is an employee of a public school, community college, or State agency. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave. (1999-170, s. 2; 2003-9, s. 2; 2003-284, s. 30.14A(b).)

Cross References. — As to voluntary shared leave for community college employees, see G.S. 115D-25.3. As to voluntary shared leave for employees of state agencies, see G.S. 126-8.3.

Editor's Note. — Session Laws 2003-9, s. 4, provides: "Prior to the adoption of any rules pursuant to this Act:

"(a) The president of any community college shall allow any employee of that community college to share leave voluntarily with an immediate family member, as defined in Section 3 of this Act, who is an employee of a community college, public school, or State agency; and

"(b) Community colleges, public schools, and State agencies shall permit eligible employees to receive leave pursuant to this Act."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.5, is a severability clause.

§ 115C-13. Duty to maintain confidentiality of certain records.

Except as otherwise provided by federal law, local boards of education and their officers and employees shall provide to the State Board and to the Superintendent all information needed to carry out their duties. It is unlawful for any member of the State Board of Education, the Superintendent of Public Instruction, or any employee or officer of the State Board of Education or the Department of Public Instruction to disclose any of this information that the local board or its officers or employees could not lawfully disclose. This disclosure is a Class 1 misdemeanor. (1985, c. 757, s. 145(j); 1993, c. 539, s. 880; 1994, Ex. Sess., c. 24, s. 14(c).)

OPINIONS OF ATTORNEY GENERAL

The licensure status of teachers is public information that the State Board of Education and DPI create pursuant to the State Board of Education's constitutional and statutory authority to license or certify public school employees and is, therefore, not subject to the protections of this section. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

§ 115C-14: Repealed by Session Laws 1987, c. 414, s. 11.

§ 115C-15: Repealed by Session Laws 1997-18, s. 1.

§ 115C-16. Authorization for school uniform pilot program.

The State Board of Education may authorize up to five local school administrative units to implement pilot programs in which students are required to wear uniforms in public schools.

Prior to selecting the pilot units, the State Board of Education shall develop guidelines for local boards of education to use when establishing requirements for students to wear uniforms in public schools. In developing these guidelines, the State Board shall consider (i) ways to promote parental and community involvement in the pilot programs, (ii) relevant State and federal constitutional concerns such as freedom of religion and freedom of speech, and (iii) the ability of students to purchase the uniforms.

Local boards in the pilot units shall establish requirements, consistent with the State Board's guidelines, for students enrolled in any of their schools to wear uniforms at school during the regular school day.

No State funds shall be used for the uniforms. (1995, c. 334, s. 1.)

Editor's Note. — Session Laws 1995, c. 334, s. 1 was codified as this section at the direction of the Revisor of Statutes.

CASE NOTES

General County Authority. — Where the county's uniform policy was implemented pursuant to its "general control and supervision" authority under G.S. 15C-36, the enactment of that uniform policy did not contravene this section. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649, 1999 U.S. Dist. LEXIS 21240 (E.D.N.C. 1999).

Construction with Other Laws. — This section did not limit the authority of the County School Board to adopt a uniform policy for its students, which was implemented pursuant to its "general control and supervision" authority under G.S. 115C-36. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649, 1999 U.S. Dist. LEXIS 21240 (E.D.N.C. 1999).

This section does not limit the authority of a county school board to adopt a uniform policy; it merely authorizes the State Board of Education to implement a pilot program, and the State Board chose not to do so, but instead to allow local authorities to adopt uniform policies in accordance with guidelines provided by the State Board. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649, 1999 U.S. Dist. LEXIS 21240 (E.D.N.C. 1999).

§ 115C-17. Rulemaking to implement ABC's Plan.

(a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act [1995 (Reg. Sess., 1996), c. 716, s. 28].

(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

(c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act [1995 (Reg. Sess., 1996), c. 716, s. 28].

(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board. (1995 (Reg. Sess., 1996), c. 716, s. 28.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28, implementing the ABC's plan, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28(f), provides that this section does not apply to sections 11 to 15.1 of that act [G.S. 115C-47, 115C-522, 115C-522.1, 115C-528, and 115C-529].

ARTICLE 3.

Department of Public Instruction.

§ 115C-18. Election of Superintendent of Public Instruction.

The Superintendent of Public Instruction shall be elected by the qualified voters of the State in 1972 and every four years thereafter at the same time and places as members of the General Assembly are elected. His term of office shall be four years and shall commence on the first day of January next after election and continue until his successor is elected and qualified.

If the office of the Superintendent of Public Instruction is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of North Carolina. When a vacancy occurs in the office and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the occurrence of a vacancy in the office for any of the causes stated herein, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy and is qualified.

The time of the election of the Superintendent of Public Instruction shall be in accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General Statutes.

The election, term and induction into office of the Superintendent of Public Instruction shall be in accordance with the provisions of G.S. 147-4. (1981, c. 423, s. 1.)

Cross References. — As to establishment of the School-Based Child and Family Team Initiative, see G.S. 143B-366.

Editor's Note. — Session Laws 2007-323, s. 7.29(a), as amended by Session Laws 2008-194, s. 9, which expires on June 30, 2009, provides: "(a) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5, contains a severability clause.

CASE NOTES

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 115C-19. Chief administrative officer of the State Board of Education.

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. As secretary and chief administrative officer of the State Board of Education, the Superintendent manages on a day-to-day basis the administration of the free public school system, subject to the direction, control, and approval of the State Board. Subject to the direction, control, and approval of the State Board of Education, the Superintendent of Public Instruction shall carry out the duties prescribed under G.S. 115C-21. (1955, c. 1372, art. 3, s. 1; 1971, c. 704, s. 5; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 4; 1995, c. 72, s. 1.)

CASE NOTES

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982).

§ 115C-20. Office and salary.

The Superintendent of Public Instruction shall keep his office in the Education Building in Raleigh, and his salary shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2; 1971, c. 912, s. 2; 1973, c. 778, s. 2; 1975, 2nd Sess., c. 983, s. 17; 1977, c. 802, s. 42.15; 1981, c. 423, s. 1; 1983, c. 761, s. 210; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b).)

§ 115C-21. Powers and duties generally.

(a) Administrative Duties. — Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as the State Board considers necessary for supervision and administration of the public school system. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction are subject to the approval of the State Board of Education, which may terminate these appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for changes in the school law.

(4) To have printed and distributed such educational bulletins as are necessary for the professional improvement of teachers and for the

cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To manage all those matters relating to the supervision and administration of the public school system that the State Board delegates to the Superintendent of Public Instruction.

(6) To create a special fund within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. Effective July 1, 1995, this special fund is transferred to the State Board of Education and shall be administered by the State Board in accordance with G.S. 115C-410.

(7) Repealed by Session Laws 1995, c. 72, s. 2.

(b) Duties as Secretary to the State Board of Education. — Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction, the instructional policies established by the Board.

(1a) Repealed by Session Laws 1995, c. 72, s. 2.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 2, s. 2; art. 3, ss. 3, 4; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, ss. 2, 3; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1985, c. 479, s. 37; 1987 (Reg. Sess., 1988), c. 1025, ss. 5-8; 1989, c. 752, s. 78(a); 1989 (Reg. Sess., 1990), c. 1066, s. 102; 1991 (Reg. Sess., 1992), c. 812, s. 6(g); c. 1044, s. 22(a); 1993, c. 522, s. 1; 1995, c. 72, s. 2.)

Students with Limited English Proficiency. — Session Laws 2007-323, s. 7.9(a), (b), provides: "(a) The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

"The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2.5%) of the average daily membership of the unit or charter school. For the portion of the funds that is allocated on the basis of the number of identified students, the maximum number of identified students for whom a unit or charter school receives funds shall not exceed ten and six-tenths percent (10.6%) of its average daily membership.

"Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, tutors, textbooks, classroom materials/instructional supplies/equipment, transportation costs, and staff development of teachers for students with limited English proficiency.

"A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

"(b) The Department of Public Instruction shall prepare a current head count of the number of students classified with limited English proficiency by December 1 of each year.

"Students in the head count shall be assessed at least once every three years to determine their level of English proficiency. A student who scores 'superior' on the standard English language proficiency assessment instrument used in this State shall not be included in the head count of students with limited English proficiency."

For similar prior provisions, see Session Laws 2003-284, s. 7.15 and Session Laws 2005-276, s. 7.9(a), (b).

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See notes under G.S. 115C-105.20.

Transfer of More at Four Program and Office of School Readiness to Department of Public Instruction. — Session Laws 2006-66, s. 7.18(a), provides: "(a) The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education."

More at Four Program and Office of School Readiness. — Session Laws 2007-323, s. 7.24(a)-(f), as amended by Session Laws 2008-107, s. 7.17(c), and as amended by Session Laws 2008-181, s. 49.1, provides: "(a) The Department of Public Instruction shall continue the implementation of the 'More at Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are research-based and/or built on sound instructional theory. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through a statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services and the Department of Public Instruction. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More at Four.'

"(11) A system of accountability to include a yearly review. The Department shall contract with an independent research organization to produce an annual report to include longitudinal review of the program and academic, behavioral, and other child specific outcomes. The review shall also include a test of the feasibility of conducting a quasi experimental research design with a representative sample or samples of children who complete the More at Four program every year and children of comparable demographics and grade levels that do not participate in a More at Four program. The review shall be presented to the Joint Legislative Oversight Committee on Education by January 31 of every year.

"(12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services and the Department of Public Instruction shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

"(b) The Department of Public Instruction shall implement a plan to expand 'More at Four' program standards within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The 'NC Prekindergarten Program Standards' initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent 'More at Four' program standards as high quality pre-k classrooms. Classrooms meeting these standards shall have access to training and workshops for 'More at Four' programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them.

"The 'More at Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 31 of each year, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

"(c) The Department of Public Instruction shall submit a report by February 1, 2008, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Education, the House of Representatives Appropriations Subcommittee on Education, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(6) The status of the NC Prekindergarten initiatives as outlined in this section.

"(d) For the 2007-2008 and the 2008-2009 fiscal years, the 'More at Four' program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors. Furthermore, any age-eligible child of (i) an active duty member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who is ordered to active duty by the proper authority within the last 18 months or expected to be ordered within the next 18 months, or (ii) a member of the armed forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the armed forces, who was injured or killed while serving on active duty, shall be eligible for the program.

"(e) The 'More at Four' program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2005-2006 fiscal year. Support of existing four-year-old classrooms with 'More at Four' program funding shall be permitted when current funding is eliminated, reduced, or redirected as required to meet other specified federal or State educational mandates.

"(f) If a county is unable to increase 'More at Four' slots because of a documented lack of available resources necessary to provide the required local contribution for the additional slots allocated to the county for the 2007-2008 fiscal year, the contract agency for that county may appeal to the Office of School Readiness for an exception to the required local amount for those additional slots. The Office of School Readiness may grant an exception and allot funds to pay up to ninety percent (90%) of the full cost of the additional slots for that county if it finds that (i) there is in fact a documented lack of available resources in the county and (ii) granting the exception will not reduce access statewide to 'More at Four' slots."

Task Force on the Consolidation of Early Childhood Education and Care. — For provisions regarding the Task Force on the Consolidation of Early Childhood Education and Care under Session Laws 2009-451, s. 10.7A, see the notes at G.S. 143B-138.1 and G.S. 143B-168.10.

Editor's Note. — Session Laws 2001-146, s. 1, provides: "The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Department of Public Instruction shall work cooperatively to expand the opportunities for military personnel to enroll in and complete teacher education programs prior to discharge from the military. The cooperative effort shall include the expansion, as feasible, of teacher education classes and programs on military bases and at alternate near by sites, through Internet-based course offerings, and through cooperative education programs. The cooperative effort shall also focus on the educational needs unique to active military personnel who are potential teachers or teacher assistants and ways to make the necessary classes and programs more accessible to them. A special effort shall also be made to communicate with and inform military personnel of the educational opportunities available on military bases, at alternate sites near military bases, through long-distance education, and through cooperative education."

Session Laws 2005-445, s. 5, provides: "The Department of Public Instruction shall study the feasibility of designating an employee to serve as its liaison to the military bases in North Carolina and report to the 2006 Regular Session of the 2005 General Assembly. It shall be the responsibility of the liaison to facilitate communication and cooperation between (i) military personnel and their families and the Department and (ii) military personnel and their families and the North Carolina public schools."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005.'"

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 7.29(a), as amended by Session Laws 2008-194, s. 9, which expires on June 30, 2009, provides: "(a) Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize in accordance with the plan adopted by the State Board of Education. The Department shall report to the Joint Legislative Commission on Governmental Operations on the reorganization."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-453, ss. 1-6, provide: "1. The State Board of Education shall establish a pilot program authorizing the implementation of alternative teacher salary plans. The purpose of the pilot program is to enable local school administrative units to develop and implement new and innovative teacher salary plans that will improve student performance by financially rewarding teachers through performance pay plans, recruiting teachers to the school unit, and recruiting teachers to hard-to-fill positions in specific subject areas. The State Board of Education may select up to five local school administrative units to participate in the pilot program.

"2. Local school administrative units applying to participate in the pilot program shall submit to the State Board of Education a business plan adopted by the local board of education. The business plan shall:

"(1) Explain in detail how additional flexibility regarding the use of salary funds will be used to accomplish specific improvements in student academic performance;

"(2) Describe the alternative methods to be used, the changes to existing practices proposed for the pilot, the incentives or alternative salary structure to be deployed, the expectations for teachers and other employees who participate in the pilot, the anticipated results, and the methods by which teachers and other employees will be evaluated;

"(3) Set out the laws, rules, and policies that must be waived to implement the business plan and the expected outcomes of waiving them;

"(4) Explain how the plan will be administered in a nondiscriminatory manner to assure fair and equitable treatment of all employees and employee groups participating in the pilot;

"(5) Include specific implementation, time line, management, performance, and reporting benchmarks;

"(6) Include statements of how teachers and other stakeholders were included in the development of the plan; and

"(7) Include a statement of how all teachers who will be directly participating in the plan conducted a verifiable secret ballot vote, a statement that the results of the vote were presented to the planning team and local board of education prior to the local board's consideration of the final plan, and a statement that the majority of teachers in the schools participating in the plan and the school administration team have agreed on the design of the plan.

"3. The State Board of Education may grant waivers of laws, rules, and policies to pilot units that are necessary to implement the business plans submitted by the pilot units.

"4. The Department of Public Instruction shall notify all school districts of the availability of the pilot projects and the time lines for submission of the business plans. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee as to the number of districts that have submitted business plans, the types of waivers being requested, and the status of the selection process.

"5. The Financial Services Section of the Department of Public Instruction shall monitor the implementation of the business plans by the pilot units and shall report its findings regularly to the State Board of Education and the Joint Legislative Education Oversight Committee.

"6. The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by June 30, 2010, regarding the effectiveness and performance of all pilots implemented under this act. The report shall include any recommendations regarding the continuation, modification, or elimination of the pilot program."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

CASE NOTES

Department of Public Instruction may not take any action contradictory to a properly enacted regulation or policy of the State Board of Education. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996), aff'd, 345 N.C. 493, 480 S.E.2d 50 (1997).

§ 115C-21.1: Repealed by Session Laws 1997-18, s. 2.

§ 115C-22: Repealed by Session Laws 1997, c. 18, s. 3.

§§ 115C-23 through 115C-26: Reserved for future codification purposes.

Article 4.

Office of the Controller.

§§ 115C-27 through 115C-34: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 2.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1025, s. 16 provided that the Office of the Controller of the State Board of Education would be transferred to the Department of Public Instruction, and that this transfer would have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a).

Article 5.

Local Boards of Education.

§ 115C-35. How constituted.

(a) The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years: Provided, that where there are multiple local school administrative units located within the county, and unless the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, only those voters who reside within the county school administrative unit boundary lines shall be eligible to vote for members of the county board of education. Where the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, the voters residing within that city school administrative unit shall be eligible to vote for members of the county board of education.

The terms of office of the members of boards of education of all school administrative units in this State, who serve on June 25, 1975, shall continue until members are elected and qualified as provided in this section unless modified by local legislation.

(b) No person residing in a local school administrative unit shall be eligible for election to the board of education of that local school administrative unit unless such person resides within the boundary lines of that local school administrative unit. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2; 1975, c. 855, ss. 1-3; 1981, c. 423, s. 1.)

Cross References. — As to method of constituting and continuing boards of education, and the manner of selection of board members in the context of a merger of school administrative units, see G.S. 115C-67.

CASE NOTES

Statute Authorizing City Residents to Vote for County School Board Members. — For a case dealing with the constitutionality of local statutes authorizing certain city residents to vote for some members of county school boards, see Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975), decided under former Chapter 115.

Court Did Not Err in Dismissing Claims Against Superintendent. — Trial court did not err in dismissing plaintiffs' claims against superintendent; although plaintiffs alleged superintendent's representations to both defendant boards "were grossly overstated" and "without foundation in fact," plaintiffs did not allege superintendent was in a decision-making position as to acquisition of the Square D facility. As a matter of law, a superintendent does not vote on appropriations. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Cited in Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984); Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

Former G.S. 115-18 and 115-19 Inapplicable to New Hanover County. — See opinion of Attorney General to Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

Statutory Provisions as to Election of Board Members Superseded by Merger Agreement. — See opinion of Attorney General to Mr. E.P. Dameron, Attorney for the McDowell County Board of Education, 40 N.C.A.G. 225 (1970), rendered under former Chapter 115.

§ 115C-36. Designation of board.

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; 1981, c. 423, s. 1.)

Cross References. — As to powers and duties of board generally, see G.S. 115C-47.

CASE NOTES

Sovereign Immunity of Boards. — The county board of education was held to be more akin to a county in North Carolina than to an arm of the State for purposes of sovereign immunity, where this provision expressly excludes local school boards from the definition of a State agency, where the State would not be liable for any costs associated with the plaintiff-disgruntled employee's suit for overtime pay, and where a judgment rendered against the local school board would not affront the State's dignity. Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

General County Authority. — Where the county's uniform policy was implemented pursuant to its "general control and supervision" authority under this section, the enactment of that uniform policy did not contravene G.S. 115C-16. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649, 1999 U.S. Dist. LEXIS 21240 (E.D.N.C. 1999).

Board of education's resolution to authorize its chairman to approve an interlocal agreement was afforded a presumption of legality and correctness: (1) G.S. 160A-274, G.S. 153A-158, G.S. 115C-36, and G.S. 115C-518 authorized the board, upon such terms and conditions as it deemed wise, to exchange property owned by the board, based upon a determination that the property was no longer suitable and necessary for public school purposes; (2) the board determined that the replacement office space in the Government Center was more suitable for its needs; (3) this determination was adequate to meet the unnecessary or unsuitable requirement of G.S. 115C-518, (4) plaintiff failed to overcome the presumption of legality afforded public officials; therefore (5) plaintiff's complaint did not state a cause of action, as required by G.S. 1A-1, N.C. R. Civ. P. 8(a), for which relief could be granted. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

For case discussing power of board of education to acquire land for school purposes under former Chapter 115, see Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Adoption of School Uniform Policy. — This section did not limit the authority of the County School Board to adopt a uniform policy for its students, which was implemented pursuant to its "general control and supervision" authority under this section. Hicks v. Halifax County Bd. of Educ., 93 F. Supp. 2d 649, 1999 U.S. Dist. LEXIS 21240 (E.D.N.C. 1999).

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Cited in Crump v. Board of Educ., 93 N.C. 168, 378 S.E.2d 32 (1989); N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004); Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

OPINIONS OF ATTORNEY GENERAL

School System Can Transfer Qualified Employees from Locally Funded Positions to State Funded Positions. — The power to assign teachers to either state or locally funded positions rests with local boards of education and, therefore, a school system could properly transfer qualified employees from locally funded positions to state funded positions in order to maximize its use of state funds. See opinion of Attorney General to Leslie Winner, Charlotte-Mecklenburg Board of Education, 1999 N.C. AG LEXIS 21 (5/26/99).

§ 115C-37. Election of board members.

(a) Method of Election. — The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years.

(b) County Board of Elections to Provide for Elections. — The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education.

(c) City Board of Education. — The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by the law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within 30 days, the State Board of Education may fill such vacancy.

(d) Members to Qualify. — Each county board of education shall hold a meeting in December following the election. At that meeting, newly elected members of the board of education shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

(e) Vacancies in Nominations for Membership on County Boards. — If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate.

(f) Vacancies in Office. — All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of subsection (a) of this section by death, resignation, or other causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election.

(g) Eligibility for Board Membership; Holding Other Offices. — Any person possessing the qualifications for election to public office set forth in Article VI, Sec. 6 of the Constitution of North Carolina shall be eligible to serve as a member of a local board of education: Provided, however, that any person elected or appointed to a local board of education, and also employed by that board of education, shall resign his employment before taking office as a member of that board of education.

Membership on a board of education is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, Sec. 9 of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a local board of education.

(h) Death or Disqualification of Candidate in Nonpartisan Election. — If a candidate dies or becomes disqualified after the filing period has closed and before the election, and the ballots have not been printed, the county board of elections shall immediately reopen the filing period for five days so that additional candidates may file for election. If the ballots have been printed at the time the board of elections receives notice of the death or disqualification, the board shall reopen the filing period for three days if the board determines it will have time to reprint the ballots before the election.

In the event the board of elections determines that there is not time enough to reopen the filing period for three days and to reprint the ballots, then the ballots shall not be reprinted and the name of the deceased or disqualified candidate shall remain on the ballot. Votes cast for such candidate shall not be considered and the candidates receiving the highest number of votes equal to the number of positions to be filled shall be elected.

(i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them only for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. After the General Assembly has ratified an act establishing district boundaries, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event first occurs. After the local board of education has revised district boundaries in conformity with this act, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event occurs first, except that the board may make an earlier revision of district boundaries it has drawn if it must do so to comply with a court order or to gain approval of a district-revision plan by the U.S. Justice Department under Section 5 of the Voting Rights Act. In establishing district boundaries, the local board of education shall use data derived from the most recent federal census. (1955, c. 1372, art. 5, ss. 2-8; 1967, c. 972, ss. 2-6; 1969, c. 1301, s. 2; 1971, c. 704, s. 6; 1973, c. 1446, s. 1; 1977, c. 662; 1981, c. 423, s. 1; 1985, c. 404; c. 405, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 975, s. 10; 1991, c. 400, s. 1.)

Local Modification. — Davidson: 1995, c. 300, s. 1; Northampton: 1993, c. 110, s. 1; Orange: 1981, c. 911; Pender: 1989 (Reg. Sess., 1990), c. 1008, s. 1; Alexander County Board of Education: 1991, c. 253; 1991, c. 695, s. 1; Ashe County Board of Education: 1995, c. 128, s. 1, as amended by 2000-6, s. 1; Bertie County Board of Education: 2007-272, s. 1(as to subsection (d)); Carteret County Board of Education: 1991 (Reg. Sess., 1992), c. 774; Caswell County Board of Education: 1987 (Reg. Sess., 1988), c. 1016, s. 15; Chatham County Board of Education: 1995, c. 80, s. 3(f); Clay County Board of Education: 1991, c. 254, s. 1 (contingent on referendum); Edgecombe County Board of Education: 1999, c. 12; Halifax County Board of Education: 1991, c. 97; Hyde County Board of Education: 2007-272, s. 2(as to subsection (a)); Jackson County Board of Education: 1991, c. 170, s. 1; Madison County Board of Education: 1991, c. 249, s. 4 (contingent on referendum); Martin County Board of Education: 1995, c. 77, s. 1; McDowell County Board of Education: 1987, c. 322; 1995, c. 107, s. 1; Pamlico County Board of Education: 1987 (Reg. Sess., 1988), c. 939, s. 11; Perquimans County Board of Education: 1993 (Reg. Sess., 1994), c. 626, s. 1; Richmond County Board of Education: 1995 (Reg. Sess., 1996), c. 598, s. 1.; Rockingham County Board of Education: 1989, c. 685, s. 1; Stokes County Board of Education: 1995, c. 66, s. 1; Surry County Board of Education: 1991, c. 308; Tyrrell County Board of Education: 2001-4; Warren County Board of Education: 2007-50, s. 4; Winston-Salem/Forsyth County Board of Education: 1961, c. 112, s. 2(a)(5)(iii), as amended by 1985, c. 466, 1991, c. 696, and 2009-72.

Cross References. — As to method of constituting and continuing boards of education, and the manner of selection of board members in the context of a merger of school administrative units, see G.S. 115C-67.

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Effect of Failure to Qualify on Day Prescribed. — A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, and where the members of a board appointed by the General Assembly failed to take the oath of office on the date prescribed by statute, but took oath on the next succeeding day, their failure to qualify on the day prescribed did not impair the existence of the corporate body, and where they had discharged the statutory duties imposed upon them, and no vacancy had been declared by the State Board of Education, and no proceedings in the nature of quo warranto had been instituted to determine their right to office, the acts of the appointees as members of the board could not be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its statutory duties. Crabtree v. Board of Educ., 199 N.C. 645, 155 S.E. 550 (1930).

Purpose of Former Statute as to Filling Vacancies. — See Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Unexpired Term Divided into Two Parts. — See State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952), decided under former § 115-24.

A member of the county board of education holds a public office under the State and was thus subject to the prohibition against double office holding contained in former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9). Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Under former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9) one person could not hold the office of county commissioner and also be a member of the county board of education. State ex rel. Barnhill v. Thompson, 122 N.C. 493, 29 S.E. 720 (1898).

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— Most of the opinions below were rendered under corresponding provisions of former Chapter 115.*

This section did not supercede local legislation which provided that members of the County Board of Education, appointed to fill mid-term vacancies, would serve the remainder of the term of the office to which they were appointed. See opinion of Attorney General to Mr. Charles S. Rountree, III, Chairman, Edgecombe County Board of Elections, 1998 N.C.A.G. 2 (1/14/98).

Former §§ 115-18 and 115-19 Not Applicable to New Hanover County. — See opinion of Attorney General to Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

Former Statute Superseded by Special Act for Designated Boards of Education. — See opinion of Attorney General to Mr. John G. Mills, Jr., Attorney for Wake County Board of Education, 40 N.C.A.G. 226 (1970).

"Single-Shot" Voting Regulations Not Applicable to County Boards of Education. — See opinion of Attorney General to Mr. Thomas H. Morris, Chairman, Lenoir County Board of Elections, 40 N.C.A.G. 293 (1970).

Nonpartisan Election Requires Plurality of Votes Only. — See opinion of Attorney General to Mr. R. V. Biberstein, Jr., Pender County Board of Education Attorney, 40 N.C.A.G. 238 (1970).

As to filling vacancies on board whose members are elected on a nonpartisan basis, see opinion of Attorney General to Mr. Jesse C. Carson, Jr., Superintendent, County Schools, 40 N.C.A.G. 235 (1970).

As to former statute relating to eligibility applicable to technical institute personnel, see opinion of Attorney General to Mr. Holland McSwain, President, Tri-County Technical Institute, 40 N.C.A.G. 279 (1970).

Term of Appointments to Fill Vacancies. — Persons appointed to vacancies on the Brunswick County Board of Education are to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurred must be filled by election. See opinion of Attorney General to Mr. B. Joseph Causey, Jr. and Mr. Huey Marshall, 2004 N.C.A.G. 3 (4/13/04).

Because 1967 N.C. Sess. Laws c. 29 remains the controlling law for the Elizabeth City — Pasquotank Board of Education, any vacancies on the Board are to be filled by the remaining members of the Board and the persons so selected are to serve the complete unexpired term of the member whose death, resignation or disqualification from office created the vacancy. See opinion of Attorney General to Mr. L.P. Hornthal, Jr., Hornthal, Riley, Ellis & Maland, L.L.P., 2004 N.C.A.G. 9 (5/6/04).

Qualification of New Members. — If a person elected to the board of education who is also employed by the board does not resign before the second Monday in December following the election due to his continued employment with the board, a vacancy on the board will occur on that date. See opinion of Attorney General to L. Wardlaw Lamar, Valentine, Adams, and Lamar, L.L.P., 2004 N.C. AG LEXIS 13 (12/2/04).

There is no conflict between subsection (g) of this section and the Nash-Rocky Mount Local Act; therefore any person elected to the board of education who is also employed by the board is required to resign his employment before taking his seat. See opinion of Attorney General to L. Wardlaw Lamar, Valentine, Adams, and Lamar, L.L.P., 2004 N.C. AG LEXIS 13 (12/2/04).

There is no conflict between subsection (d) of this section and the Nash-Rocky Mount Local Act; therefore, new members of the board qualify for office by taking the oath at a meeting held on the second Monday in December following their election. See opinion of Attorney General to L. Wardlaw Lamar, Valentine, Adams, and Lamar, L.L.P., 2004 N.C. AG LEXIS 13 (12/2/04).

A person elected to the board of education who is also employed by the board who does not resign before the second Monday in December following the election due to his continued employment with the board, may qualify for appointment to a vacancy on the board when he does resign, but he will not qualify to hold the office by virtue of his election. See opinion of Attorney General to L. Wardlaw Lamar, Valentine, Adams, and Lamar, L.L.P., 2004 N.C. AG LEXIS 13 (12/2/04).

In the case of a vacancy on the district court, the appointment of a new judge is for the entire unexpired term. See opinion of Attorney General to The Honorable Christopher W. Bragg, Union County Courthouse, 2004 N.C. AG LEXIS 12 (11/18/04).

§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat), the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

(d) **(Effective until December 1, 2010)** This section shall apply only in the following counties: Alleghany, Brunswick, Forsyth, Graham, New Hanover, Vance, and Washington.

(d) **(Effective December 1, 2010)** This section shall apply only in the following counties: Alleghany, Brunswick, Graham, New Hanover, Vance, and

G.S. 115C-37.1(d) is set out twice. See notes.

Washington. (1981, c. 763, ss. 4, 14; c. 830; 1983, c. 493, s. 1; 1987 (Reg. Sess., 1988), c. 974, s. 5; 1989, c. 497, s. 3; 2009-277, ss. 1, 2.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until December 1, 2010. The second version of subsection (d) set out above is effective December 1, 2010.

Effect of Amendments. — Session Laws 2009-277, s. 1, effective July 10, 2009, substituted "Alleghany, Brunswick, Forsyth, Graham, New Hanover, Vance, and Washington" for "Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Vance, Wake, Washington, and Yancey" in subsection (d).

Session Laws 2009-277, s. 2, effective December 1, 2010, deleted "Forsyth" preceding "Graham" in subsection (d).

§ 115C-38. Compensation of board members.

The tax-levying authority for a local school administrative unit may, under the procedures of G.S. 153A-92, fix the compensation and expense allowances paid members of the board of education of that local school administrative unit.

Funds for the per diem, subsistence, and mileage for all meetings of county and city boards of education shall be provided from the current expense fund budget of the particular county or city.

The compensation and expense allowances of members of boards of education shall continue at the same levels as paid on July 1, 1975, until changed by or pursuant to local act or pursuant to this section. (1955, c. 1372, art. 5, s. 12; 1975, c. 569, ss. 1-3; 1977, c. 802, s. 39.5; 1981, c. 423, s. 1.)

§ 115C-39. Suspension of duties by State Board.

(a) Repealed by Session Laws 2007-498, s. 1, effective August 30, 2007.

(b) In the event the State Board of Education has appointed an interim superintendent under G.S. 115C-105.39 and the State Board determines that the local board of education has failed to cooperate with the interim superintendent, the State Board shall have the authority to suspend any of the powers and duties of the local board and to act on its behalf under G.S. 115C-105.39. (1955, c. 1372, art. 5, s. 13; 1981, c. 423, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 5; 2007-498, s. 1.)

CASE NOTES

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

§ 115C-40. Board a body corporate.

The board of education of each county in the State shall be a body corporate by the name and style of "The __________ County Board of Education," and the board of education of each city administrative school unit in the State shall be a body corporate by the name and style of "The __________ City Board of Education." The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective local school administrative units; they shall execute the school laws in their units; and shall have authority to make agreements with other boards of education to transfer pupils from one local school administrative unit to another unit when the administration of the schools can be thereby more efficiently and more economically accomplished. (1955, c. 1372, art. 5, s. 10; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 2; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 2; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 2; Duplin: 1993, c. 549, s. 1; Forsyth: 1993 (Reg. Sess., 1994), c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, ss. 2, 3; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 2; 1993 (Reg. Sess., 1994), c. 623, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 2; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 3.

Cross References. — As to actions against boards and board members and employers, see G.S. 115C-42 through 115C-44.

Editor's Note. — For provisions regarding certain counties and local boards of education for school administrative units, see the editor's note under G.S. 153A-158.1.

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Board Has Legal Existence Apart from Members. — Since the county board of education is a corporate body, it necessarily has a legal existence separate and apart from its members. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952); McLaughlin v. Beasley, 250 N.C. 221, 108 S.E.2d 226 (1959).

County board of education is a corporate body which has a legal existence separate and apart from its members. Miller v. Henderson, 71 N.C. App. 366, 322 S.E.2d 594 (1984).

Claims Against Individual Members of Boards Failed. — Where plaintiffs did not specifically allege any acts corrupt, malicious, or outside the scope of duty by any individual member of either board, and instead, all the allegations were as to acts of the two boards qua boards, since a county board of education is a corporate body with a legal existence of its members, plaintiffs' claims against the individual members of the two boards had to fail. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

City voters' interest in functions performed by county board for the benefit of it and city boards — student transportation, the educational resource center, and the projects for special students — individually or collectively, did not amount to a compelling State interest that city voters participate in the election of certain county school board members. Locklear v. North Carolina State Bd. of Elections, 514 F.2d 1152 (4th Cir. 1975).

Need for and Location of New School Buildings. — The board of education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the board, and its discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Board of County Commissioners Not Authorized to Devise and Fund School for Dyslexic Children, Absent Prior School Board Action. — Since, under the scheme for public education devised by the General Assembly, the board of county commissioners is empowered to appropriate funds only for items that are included by the board of education in its annual school budget, the board of county commissioners, absent statutory authority, cannot on its own initiative devise and fund programs for the school system. Therefore, a program of aid for the Dyslexia School of North Carolina devised and funded by the Gaston County Board of Commissioners on its own initiative and made directly to the school by that Board was not authorized under the statutory scheme for public education adopted by the General Assembly. Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979).

Disposition of Property Claim Would Not Lie Against Board of Commissioners. — The court did not err in determining complaint failed to state a claim as to the proposed sale of school and its adjacent property; the county board of education, not the board of commissioners, holds all school property and is capable of selling and transferring the same for school purposes; applying this law to the case under review, no claim with respect to disposition of the school property would lie against defendant board of commissioners. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Actions Against Board. — A county school board is a body corporate, and while it may sue and be sued in its corporate name, this fact, standing alone, is not determinative as to what actions may be maintained against it. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

Same — Tort Immunity. — A county school board of education has immunity from liability for torts of its members or agents except such liability as may be established under the Tort Claims Act, G.S. 143-291 et seq. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955); Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960). But see § 115C-42 et seq.

The Tort Claims Act, G.S. 143-291 et seq., applicable to the State Board of Education and to State departments and agencies, except as amended by G.S. 143-300.1, does not include local units such as county and city boards of education. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959). But see § 115C-42 et seq.

For case in which a tort action against city school board based on negligence of employee was not allowed on grounds of governmental immunity, see Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959). But see § 115C-42 et seq.

Same — Taking of Property. — An adjoining property owner was entitled to maintain an action against county school board for recovery of compensation for an alleged taking of plaintiff's land arising out of the construction and operation of a sewage disposal device by the school board which allegedly rendered plaintiff's spring unfit for use and his dwelling unfit for habitation, since complaint did not allege or attempt to allege a cause of action in tort. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

Same — Teacher's Contract. — An action may be maintained against a county board of education on a teacher's contract. Kirby v. Stokes County Bd. of Educ., 230 N.C. 619, 55 S.E.2d 322 (1949).

No Error in Dismissal of Plaintiffs' Claims for Preliminary Injunctive Relief. — Court did not err in dismissing plaintiffs' claims for preliminary injunctive relief; under a fair reading of plaintiffs' prayer for relief, the only preliminary injunctive relief requested was the enjoining of the disposal of the school property; while allegations may have been sufficient to show with particularity irreparable harm resulting from the expenditure of bond monies for the purchase of the facility, plaintiffs did not seek to enjoin that purchase. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Applied in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

Cited in Herndon v. Chapel Hill-Carrboro City Bd. of Educ., 89 F.3d 174 (4th Cir. 1996); N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004); Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

OPINIONS OF ATTORNEY GENERAL

Release to Attend Private School. — Local boards of education have the discretionary authority to release students from school for a part of the school day to attend a private school so long as the private school meets compulsory attendance requirements. A school board that elects to deny such permission does not violate the constitutional rights of parents or students. A board that elects to grant such permission should recognize, and should advise parents, that the absence from school may affect the student's academic progress. See opinion of Attorney General to Mr. W. Max Walser, Superintendent, Davidson County Schools, 57 N.C.A.G. 26 (1987).

§ 115C-41. Organization of board.

(a) Unless otherwise provided by local law, all local boards of education shall have an organizational meeting no later than 60 days after the swearing in of members following election or appointment and as often thereafter as the board shall determine appropriate. The board may fix the date and time of its organizational meeting. At the organizational meeting the members of all boards shall elect one of their members as chairman for a period of one year, or until his successor is elected and qualified. The chairman of the local board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of its members temporary chairman. The superintendent of schools, whether a county or city superintendent, shall be ex officio secretary to his respective board. He shall keep the minutes of the meetings of the board but shall have no vote: Provided, that in the event of a vacancy in the superintendency, the board may elect one of its members to serve temporarily as secretary to the board.

(b) All local boards of education shall meet on the first Monday in January, April, July, and October of each year, or as soon thereafter as practicable. A board may elect to hold regular monthly meetings, and to meet in special session upon the call of the chairman or of the secretary as often as the school business of the local school administrative unit may require. (1955, c. 1372, art. 5, ss. 9, 11; 1981, c. 423, s. 1; 1983, c. 408.)

Local Modification. — Cumberland: 1983, c. 99.

CASE NOTES

Editor's Note. — The cases below were decided under corresponding provisions of former Chapter 115.

A county board of education has no authority to transact business except at a regular or special meeting, and statements or promises made by the individual members thereof have no binding effect on the board unless it expressly authorizes them. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

Attended by a Quorum. — A county board of education can exercise its power only in a regular or special meeting attended by at least a quorum of its members. It cannot perform its functions through its members acting individually, informally, and separately. Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

The statute creating the county board of education does not specify in terms the number of members competent to transact its corporate business in the absence of other members. As a consequence, the common-law rule that a majority of the whole membership is necessary to constitute a quorum applies. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Fact that action by a board of education was taken at a special meeting rather than a regular meeting had no bearing on the question of bad faith or abuse of discretion in taking such action, since special meetings are permitted by statute. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

OPINIONS OF ATTORNEY GENERAL

Member of Board of Education May Not Give Proxy to Cast Vote. — See opinion of Attorney General to Mr. Robert L. Edwards, Superintendent, Madison County Public Schools, 40 N.C.A.G. 203 (1969), rendered under former Chapter 115.

§ 115C-42. Liability insurance and immunity.

Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State or by a qualified insurer as determined by the Department of Insurance and shall by its terms adequately insure the local board of education against liability for damages by reason of death or injury to person or property proximately caused by the negligent act or torts of the agents and employees of said board of education or the agents and employees of a particular school in a local administrative unit when acting within the scope of their authority. The local board of education shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section. Any company or corporation which enters into a contract of insurance as above described with a local board of education, by such act waives any defense based upon the governmental immunity of such local board of education.

Every local board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a local board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such local board of education if, and to the extent, such local board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any local board of education of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said local board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A local board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Public School Fund. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1; 1985, c. 527.)

Cross References. — As to agreements for use of school buses by senior citizen groups, see G.S. 115C-243. As to applicability to activity buses, see G.S. 115C-247. As to applicability to securing insurance and waiver of immunity as to certain torts of bus drivers, with exception where vehicles are operated with funds from Public School Fund, see G.S. 115C-255. As to liability for transportation generally, see G.S. 115C-262. As to claims against county and city boards of education for accidents involving school buses or school transportation service vehicles, see G.S. 143-300.1.

Legal Periodicals. — For article, "Statutory Waiver of Municipal Immunity Upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

For note, "Searching for Limits on a Municipality's Retention of Governmental Immunity," see 76 N.C.L. Rev. 269 (1997).

CASE NOTES

***Editor's Note.** — Many of the cases below were decided under corresponding provisions of former Chapter 115.*

Applicability of Section. — This section does not apply to the type of claims which are covered by G.S. 143-300.1. Smith v. McDowell County Bd. of Educ., 68 N.C. App. 541, 316 S.E.2d 108 (1984).

Statute Not Retroactive. — Former G.S. 115-53, corresponding to this section, was, in its nature, not retroactive. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Construction. — As with all state statutes waiving sovereign immunity, this section must be strictly construed. Mullis v. Sechrest, 126 N.C. App. 91, 484 S.E.2d 423 (1997), cert. granted, 346 N.C. 548, 488 S.E.2d 806 (1997), rev'd on other grounds, 347 N.C. 548, 495 S.E.2d 721 (1998).

Waiver of Tort Immunity Depends on Action of Board. — The legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under the Tort Claims Act, G.S. 143-291 et seq., but has left the waiver of immunity from liability for torts to the respective boards, and then only to the extent such board has obtained liability insurance to cover negligence or torts. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960). See G.S. 143-300.1.

Waiver of immunity under this section extends only to injuries specifically covered by insurance policy. Overcash v. Statesville City Bd. of Educ., 83 N.C. App. 21, 348 S.E.2d 524 (1986).

The defendants/county board of education did not waive their sovereign immunity through the purchase of liability insurance under this section where every one of three insurance policies precluded coverage for the injuries received by the minor plaintiff who was hit by a car five months after the assistant principal of her elementary school changed her bus stop in response to a complaint that she had been assaulted by several boys while on a school bus. Herring ex rel. Marshall v. Winston-Salem/Forsyth County Bd. of Educ., 137 N.C. App. 680, 529 S.E.2d 458, 2000 N.C. App. LEXIS 500 (2000).

As a county board of education's insurance policy excluded any claims that a mother could have asserted on behalf of her son that sounded in common-law negligence, arising from the mainstream middle school's decision to deny him further placement there for the remainder of a school year due to an assault incident, the board did not waive immunity and the mother's claims failed. Craig v. New Hanover County Bd. of Educ., 185 N.C. App. 651, 648 S.E.2d 923, 2007 N.C. App. LEXIS 1941 (2007).

School board's risk-management agreement with North Carolina School Board's Trust (NCSBT) does not waive governmental immunity because NCSBT does not qualify as liability insurance under G.S.115C-42. Frye v. Brunswick County Bd. of Educ., 612 F. Supp. 2d 694, 2009 U.S. Dist. LEXIS 18084 (E.D.N.C. 2009).

Without Waiver Liability Limited to Tort Claims Act. — A county board of education, unless it has duly waived immunity from tort liability, as authorized in former G.S. 115-53 (now this section), is not liable in a tort action or proceeding involving a tort, except as may be established under the Tort Claims Act, G.S. 143-291 et seq. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966). See G.S. 143-300.1.

This section must be strictly construed against waiver. Hallman v. Charlotte-Mecklenburg Bd. of Educ., 124 N.C. App. 435, 477 S.E.2d 179 (1996).

The purchase of tort liability insurance constitutes a waiver of governmental immunity by board of education. James v. Charlotte-Mecklenburg Bd. of Educ., 60 N.C. App. 642, 300 S.E.2d 21 (1983).

Excess Insurance Policy Did Not Constitute Waiver of Immunity. — Education board did not waive tort immunity by purchasing a liability insurance policy providing coverage in excess of the board's self-insured retention of $1,000,000 because the board had immunity from tort claims, and thus it could not have been required to pay any part of the $1,000,000 self-insured amount; therefore, the excess policy provided no indemnification. Magana v. Charlotte-Mecklenburg Bd. of Educ., 183 N.C. App. 146, 645 S.E.2d 91, 2007 N.C. App. LEXIS 830 (2007).

Limitation of School Board's Waiver of Governmental Immunity. — The school board's waiver of governmental immunity was limited to the Insurance Guaranty Association's responsibility to pay $300,000, less set-off, for a covered claim under a policy issued to the board by an insolvent insurer, since the waiver was effective only to the amount that the board was indemnified. North Carolina Ins. Guar. Ass'n v. Burnette, 131 N.C. App. 840, 508 S.E.2d 837 (1998).

School Board Did Waive Sovereign Immunity to Extent of Excess Insurance Coverage. — Where a school board had participated in the North Carolina Schools Board Trust insurance plan, which insurance plan constituted an excess insurance policy, the school board was found to have waived immunity to the extent of such coverage in an action by a student and her parents arising from injury sustained when a traffic crossing gate came down on the student's car. Ripellino v. N.C. Sch. Bds. Ass'n, 158 N.C. App. 423, 581 S.E.2d 88, 2003 N.C. App. LEXIS 1184 (2003), cert. denied, 358 N.C. 156, 592 S.E.2d 694 (2004).

County board of education waived its governmental immunity under G.S. 115C-42 with respect to claims in excess of $150,000, but less than $1,000,000, by procuring an excess policy, which provided coverage of a cheerleader's claims, as it specifically incorporated one exclusion and failed to include the cheerleading exclusion of a coverage agreement with the North Carolina School Boards Trust. Lail v. Cleveland County Bd. of Educ., — N.C. App. —, 645 S.E.2d 180, 2007 N.C. App. LEXIS 1153 (2007).

Non-School Use of School Facilities. — The school district was not entitled to immunity for a personal injury claim suffered during a non-school sponsored event, where the school district had waived sovereign immunity by obtaining liability insurance, and it also had failed to comply with district procedures in allowing the non-school group to hold the event. Seipp v. Wake County Bd. of Educ., 132 N.C. App. 119, 510 S.E.2d 193 (1999).

After-School Program as Traditional Government Activity. — In personal injury case, court disagreed with plaintiff's contention that after-school program was a day-care facility and a non-traditional governmental activity not entitled to governmental immunity under this section, because the program failed to meet the statutory definition of a day-care facility under G.S. 110-86, the record revealed no evidence of profits, and the fees were insubstantial. Schmidt v. Breeden, 134 N.C. App. 248, 517 S.E.2d 171 (1999).

Where city, county and board of Education entered into an agreement creating a division of insurance and risk management to handle liability claims against the three entities, the risk management agreement was not a contract of insurance; therefore, under a strict construction of this section, the Board did not waive immunity by purchasing a contract of insurance. Mullis v. Sechrest, 126 N.C. App. 91, 484 S.E.2d 423 (1997), cert. granted, 346 N.C. 548, 488 S.E.2d 806 (1997), rev'd on other grounds, 347 N.C. 548, 495 S.E.2d 721 (1998).

Sufficiency of Complaint. — In the absence of an allegation in the complaint in a tort action against a city board of education, to the effect that such board has waived its immunity by the procurement of liability insurance to cover such alleged negligence or tort, or that such board has waived its immunity as authorized in this section, such complaint does not state a cause of action. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

Motion to Amend Complaint Denied. — Motion to amend complaint denied where plaintiffs knew of the purchase of insurance for nearly two and a half years, and failed to amend their complaint to allege this until the motions hearing when defendants moved to dismiss the action based on plaintiffs' failure to so plead. Gunter v. Anders, 115 N.C. App. 331, 444 S.E.2d 685 (1994), cert. denied, 339 N.C. 612, 454 S.E.2d 250, cert. dismissed, 339 N.C. 738, 454 S.E.2d 651 (1995).

Effect of Purchase of Insurance on Motion for Directed Verdict. — Waiver of governmental immunity to any extent by the purchase of liability insurance is sufficient to preclude the granting of a motion for a directed verdict on the ground of governmental immunity. Clary v. Alexander County Bd. of Educ., 286 N.C. 525, 212 S.E.2d 160 (1975).

Subject Matter Jurisdiction. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

Trial court properly dismissed assault victims' negligence claim against a city education board, which was based on the alleged acts of a school bus monitor and driver in not reporting a conversation between two teenagers on the bus that they would rob someone with a gun, because the North Carolina Industrial Commission had exclusive jurisdiction over the claim. Stein v. Asheville City Bd. of Educ., 168 N.C.

App. 243, 608 S.E.2d 80, 2005 N.C. App. LEXIS 263 (2005), rev'd on other grounds, 360 N.C. 321, 626 S.E.2d 263 (2006).

Exclusionary Clause of Insurance Policy Covering School Bus Liability Construed. — Construing exclusionary insurance clause, court held that clause excluded liability for injuries suffered by pupils while being transported by school bus or in the process of boarding or disembarking from a school bus, as well as excluding injuries associated with design of bus route or location of bus stop, even though latter exclusion was not specifically stated in policy. Beatty v. Charlotte-Mecklenburg Bd. of Educ., 99 N.C. App. 753, 394 S.E.2d 242 (1990), appeal dismissed, 329 N.C. 691, 406 S.E.2d 579 (1991).

When an assistant principal was sued for a student's injuries when an automobile struck the student as she walked to her school bus stop, assistant principal was entitled to summary judgment because, under G.S. 115C-42, he only waived sovereign immunity to the extent he purchased liability coverage, his insurance policy contained an exclusion of coverage for incidents arising from the use of a motor vehicle, and an exception to this exclusion for supervising students entering and exiting a school bus required the assistant principal's personal presence before his sovereign immunity was waived, and, as he was not present when the student was injured, his sovereign immunity was not waived, whether or not he changed the student's bus stop after she was assaulted on the school bus. Herring v. Liner, 163 N.C. App. 534, 594 S.E.2d 117, 2004 N.C. App. LEXIS 422 (2004).

Dismissal of a father's claims arising from the death of a student struck by a school bus was proper because, even if the North Carolina Industrial Commission did not have exclusive jurisdiction, the education board did not waive governmental immunity through the purchase of liability insurance; the relevant insurance agreements included exclusions for claims arising out of or in connection with, inter alia, and operation and use of a school bus. Although the operative complaint included allegations of, inter alia, failure to provide proper paths, and failure to supervise students, strict construction of G.S. 115C-42 and the insurance agreements compelled the conclusion that the alleged damages were caused, at least in part, by the negligence of a school bus driver and were exempt from coverage. Stacy v. Merrill, 191 N.C. App. 131, 664 S.E.2d 565, 2008 N.C. App. LEXIS 1156 (2008).

Vicarious Liability of Board. — County Board of Education's vice-chairman was not acting as an agent of the board when he made statements concerning plaintiff in action against board to newspaper editor; therefore, the board was not vicariously liable for vice-chairman's conduct. Phillips v. Winston-Salem/Forsyth County Bd. of Educ., 117 N.C. App. 274, 450 S.E.2d 753 (1994).

Board of education did not waive sovereign immunity by entering into an agreement with the North Carolina School Boards Trust which required the Trust to pay damages resulting from claims against the board for bodily injury up to $100,000; however because the Trust purchased insurance from an insurance company meeting at least one of the requirements of G.S. 115C-42 for claims over $100,000 but less than $1 million, the board had waived sovereign immunity as to those claims. Lucas v. Swain County Bd. of Educ., 154 N.C. App. 357, 573 S.E.2d 538, 2002 N.C. App. LEXIS 1458 (2002).

Applied in Durham City Bd. of Educ. v. National Union Fire Ins. Co., 109 N.C. App. 152, 426 S.E.2d 451 (1993); Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

Cited in Lindler v. Duplin County Bd. of Educ., 108 N.C. App. 757, 425 S.E.2d 465 (1993); North Carolina Farm Bureau Mut. Ins. Co. v. Knudsen, 109 N.C. App. 114, 426 S.E.2d 88 (1993); Mullis v. Sechrest, 126 N.C. App. 91, 484 S.E.2d 423 (1997); Craig v. Asheville City Bd. of Educ., 142 N.C. App. 518, 543 S.E.2d 186, 2001 N.C. App. LEXIS 145 (2001).

OPINIONS OF ATTORNEY GENERAL

Agreements Establishing Self-Insurance Programs. — Local boards of education have authority under Article 20 of Chapter 160A, G.S. 160A-460 et seq., to make agreements establishing a self-insurance program, provided (1) the contracts establishing such program contain the provisions required by G.S. 160A-464, and (2) the contracts incorporate certain limitations set forth in this section and G.S. 115C-43. See opinion of Attorney General to Mr. Gene Causby, Executive Director, North Carolina School Boards Association, 55 N.C.A.G. 77 (1986).

Local boards of education may enter into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

A Local Board of Education's Participation in the Self Retained Component Does Not Waive Immunity. — A local board of education's participation in the self retained component of the North Carolina School Boards Trust's risk management program does not constitute a waiver of governmental immunity under the statute, however, local boards waive their governmental immunity to the extent that the boards themselves are named insureds under any excess insurance policies that the trust has purchased. 2002 N.C. AG LEXIS 12 (2/20/02).

§ 115C-43. Defense of board of education members and employees.

(a) Upon request made by or in behalf of any member or employee or former member or employee, any local board of education may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of or employee of the local board of education. The defense may be provided by the local board of education by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Nothing in this section shall be deemed to require any local board of education to provide for the defense of any action or proceeding of any nature.

(b) Any local board of education may budget funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or employees or former members and employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of the local board of education or as an employee. Nothing in this section shall authorize any local board of education to budget funds for the purpose of paying any claim made or civil judgment entered against any of its members or employees or former members and employees if the local board of education finds that such member or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any local board of education may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any local board of education to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) of this section shall not authorize any local board of education to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the local board of education prior to the time that the claim is settled or civil judgment is entered and (ii) the local board of education shall have adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against members or employees or former members and employees shall be defended or paid. (1979, c. 1074, s. 1; 1981, c. 423, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Agreements Establishing Self-Insurance Programs. — Local boards of education have authority under Article 20 of Chapter 160A, G.S. 160A-460 et seq., to make agreements establishing a self-insurance program, provided (1) the contracts establishing such program contain the provisions required by G.S. 160A-464, and (2) the contracts incorporate certain limitations set forth in G.S. 115C-42 and this section. See opinion of Attorney General to Mr. Gene Causby, Executive Director, North Carolina School Boards Association, 55 N.C.A.G. 77 (1986).

Local boards of education may enter

into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

§ 115C-44. Suits and actions.

(a) A local board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all money or property which may be due to or should be applied to the support and maintenance of the schools, except in case of the breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the board of county commissioners.

(b) In all actions brought in any court against a local board of education, the order or action of the board shall be presumed to be correct and the burden of proof shall be on the complaining party to show the contrary. (1955, c. 1372, art. 5, s. 14; 1981, c. 423, s. 1.)

CASE NOTES

***Editor's Note.** — Most of the cases below were decided under corresponding provisions of former Chapter 115.*

The right to sue for the protection or recovery of the school funds of a particular school administrative unit belongs by necessary implication to the governing board of that unit. Indeed, former G.S. 115-31 (now this section) confers upon the county board of education in explicit terms the power to sue for the preservation and recovery of the money or property of the county administrative unit. Branch v. Robeson County Bd. of Educ., 233 N.C. 623, 65 S.E.2d 124 (1951).

The county board of education pursued a governmental function in bringing suit to recover costs associated with the abatement of a potential health risk to school populations incurred as a result of the presence of construction materials containing asbestos. Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

Board Was Acting as Arm of State. — Given that the State (1) has undertaken the responsibility to provide free public schools, (2) has delegated day-to-day administration and operation of those schools to counties and local school boards, including the power to bring suit to recover money or property "which may be due to or should be applied to the support and maintenance of the schools" and (3) has retained the duty of providing those local entities with considerable operating funds from state revenues, the county board of education was acting as an arm of the State in pursuing the governmental function of constructing and maintaining its schools. Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

Statutory Discretion Was Not Withdrawn by Purchase of Facility. — Where plaintiffs alleged that defendants made unauthorized diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purpose of facility, although the sale of the school property may have resulted from the purchase of facility, the Board of Education's statutory discretion to determine that the school property was surplus property no longer needed for school purposes was not withdrawn by its actions with respect to the facility. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Presumptions and Burden of Proof. — The provisions of former G.S. 115-31 (now this section) clearly provide for a presumption of correctness as to any order or action of the board in all actions brought in any court against a county or city board of education. The section further places the burden of proof on the complaining party to show otherwise. Eggiman v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754, cert. denied, 285 N.C. 756, 209 S.E.2d 280 (1974).

As to the presumption of regularity and correctness in favor of the county board of education, see Barrett v. Craven County Bd. of Educ., 70 F.R.D. 466 (E.D.N.C. 1976).

Subsection (b) of this section clearly places the burden of proof on plaintiff probationary school teachers to establish that the actions of the board in failing to renew their contracts were arbitrary or capricious. Moreover, the burden of proof includes not only the burden of going forward with the evidence, but also the burden of persuasion. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

When a teacher alleged her right to due process was violated in proceedings before a school board to terminate her employment because the school board and the school superintendent who made the recommendation to terminate her employment were represented by the same attorney, the school board's actions were presumed to be correct, under N.C. Gen. Stat. G.S. 115C-44(b). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Applied in Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Cited in Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

§ 115C-45. Judicial functions of board.

(a) Power to Subpoena and to Punish for Contempt. — Local boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of the board and which, in the discretion of the board, require investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoena upon payment of their lawful fees.

Local boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business.

(b) Witness Failing to Appear; Misdemeanor. — Any witness who shall wilfully and without legal excuse fail to appear before a local board of education to testify in any manner under investigation by the board shall be guilty of a Class 3 misdemeanor.

(c) Appeals to Board of Education and to Superior Court. — An appeal shall lie to the local board of education from any final administrative decision in the following matters:

(1) The discipline of a student under G.S. 115C-391(c), (d), (d1), (d2), (d3), or (d4);
(2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;
(3) The terms or conditions of employment or employment status of a school employee; and
(4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), (3), or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. However, the right of a noncertified employee to appeal decisions of a local board under subdivision (3) of this subsection shall only apply to decisions concerning the dismissal, demotion, or suspension without pay of the noncertified employee. A noncertified employee may request and shall be entitled to receive written notice as to the reasons for the employee's dismissal, demotion, or suspension without pay. The notice shall be provided to the employee prior to any local board of education hearing on the issue. This subsection shall not alter the employment status of a noncertified employee. (1955, c. 1372, art. 5, ss. 15-17; 1971, c. 647; 1981, c. 423, s. 1; 1993, c. 539, s. 881; 1994, Ex. Sess., c. 24, s. 14(c); 2001-260, s. 1; 2001-500, s. 6.)

CASE NOTES

Editor's Note. — *Some of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes. Some were decided under former G.S. 115C-305.*

Procedures Constitutionally Effective. — The hearing and appeal procedures contemplated by former G.S. 115-34 provided plaintiff a constitutionally effective set of administrative and judicial remedies, despite the fact that it gave authority for a hearing only after plaintiff was discharged. Presnell v. Pell, 298 N.C. 715, 260 S.E.2d 611 (1979).

This section indicates an intention to extend the right of appeal in public school personnel decisions far beyond the confines of the former law. Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986).

Construction. — Because this section and former G.S. 115C-305 both dealt with appellate review of decisions of all school personnel to the local board of education and to the superior court, courts would construe these statutes in pari materia and reconcile them so that each could be given effect. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

To accomplish the legislative purpose behind subsection (c) of this section and former 115C-305, the "or" in former G.S. 115C-305 had to be read conjunctively as an "and." This construction could preserve the long-recognized policy of judicial restraint in the context of judicial review of school personnel decisions while giving effect to both sections. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

Appeal from Personnel Decisions of County Board. — The part of former G.S. 115-34 (corresponding to subsection (c) of this section) which provided for an appeal from decisions of school personnel to the county or city board of education had no application where the decision complained of was the decision of a county board of education. Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971).

When a school superintendent recommended to a school board that a probationary teacher's contract, which had expired, not be renewed, G.S. 115C-45 did not give the teacher a right to an evidentiary hearing before the board because the statute did not apply to review of a decision of a county board of education. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Appeal Must First Be to Board of Education. — Former G.S. 115-34 required that a party entitled to its provisions first challenge action taken by school personnel by way of an appeal to the appropriate county or city board of education. After a decision by the board "affecting one's character or right to teach," a party could then invoke the appellate jurisdiction of the superior court. Presnell v. Pell, 298 N.C. 715, 260 S.E.2d 611 (1979).

Exhaustion of Administrative Remedies. — A party must exhaust his administrative remedies before seeking redress in the courts. Therefore, a teacher may not seek judicial review in superior court without first appealing the school personnel action to the local board of education. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

Trial court lacked subject matter jurisdiction over a mother's lawsuit against a superintendent, in the superintendent's official capacity, and the Board, in which the mother sought to challenge the decision to revoke the discretionary admission of the mother's two minor children to a particular high school. Although G.S. 115C-45(c) provided for administrative review of that decision, the Board had not issued a final administrative decision in the matter by the time the mother filed her lawsuit in the trial court and, thus, the mother had not exhausted the available administrative remedies. Hentz v. Asheville City Bd. of Educ., 189 N.C. App. 520, 658 S.E.2d 520, 2008 N.C. App. LEXIS 604 (2008).

Although students were not required to specifically reference futility of exhausting the administrative review processes of G.S. 115C-45(c) in their complaint, the complaint that alleged due process violations in imposing long-term suspensions was required to include allegations establishing futility. Copper v. Denlinger, — N.C. App. —, 667 S.E.2d 470, 2008 N.C. App. LEXIS 1817 (2008), review granted, in part, 363 N.C. 124 (2009).

Student's allegations were sufficient to allege that exhaustion of administrative remedies was futile where the student received a long-term suspension, entitling him to appeal that suspension, but the superintendent's letter, allowing the student to transfer to another school, converted the suspension into a short-term suspension and was designed to cut off the right to appeal. Copper v. Denlinger, — N.C. App. —, 667 S.E.2d 470, 2008 N.C. App. LEXIS 1817 (2008), review granted, in part, 363 N.C. 124 (2009).

Appeal to Superior Court Not Precluded. — An appeal to the local board of education does not preclude an appeal to the superior court. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

Appeal to Superior Court Not Permitted. — Trial court lacks subject matter jurisdiction to review a two-day suspension imposed on a student because neither G.S. 115C-391 nor G.S. 115C-45 allows an appeal of such to a superior court. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Procedure for Judicial Review. — A party must exhaust his administrative remedies before seeking redress in the courts. Therefore, a teacher may not seek judicial review in superior court without first appealing the school personnel action to the local board of education. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

Standards for Judicial Review. — The standards for judicial review set forth in G.S. 150B-51, the whole record test, govern appeals from decisions of city or county boards of education. Warren v. New Hanover County Bd. of Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

Appeal on Denial of Promotion. — A teacher who is denied a promotion under the career ladder program may appeal to the superior court after exhausting his administrative remedies by appealing to the local board of education. Warren v. New Hanover County Bd. of Educ., 104 N.C. App. 522, 410 S.E.2d 232 (1991).

Final Administrative Action. — The local board's review of the three-member appeals panel's decision as provided in G.S. 115C-363.3(c) constituted the final administrative action required before a party participating in the career ladder program may appeal to superior court pursuant to this section. Williams v. New Hanover County Bd. of Educ., 104 N.C. App. 425, 409 S.E.2d 753 (1991).

Appeal of Acceptance of Resignation. — Principal who delivered a letter of resignation to school superintendent and one week later sought unsuccessfully to withdraw it had the right under this section to appeal from the decision of the county board of education approving acceptance of his resignation. Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986).

This section entitles a non-teacher to judicial review of a school board's decision if that decision affects her character. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Dismissal Affecting Character. — Being dismissed from a job for making a racial comment, which the school board's counsel characterized as being "totally unacceptable for an employee in a school setting," affected the petitioner's character within the meaning of this section and entitled her to judicial review. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Decision Not Affecting "One's Character or Right to Teach." — Former G.S. 115-34, corresponding to this section, provided for an appeal from a decision of a county or city board of education to the superior court when the action of the board of education was one "affecting one's character or right to teach." The decision of a board to terminate the employment of a teacher at the end of the school year did not affect her character, nor did it deprive her of the right to teach elsewhere. Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971).

Review Procedures Held Adequate. — Although school board did not precisely follow the review procedures set out in this section, the review that petitioner received more than compensated for any procedural flaws in the board's actions and her substantial rights were not prejudiced thereby. Cooper v. Board of Educ., 135 N.C. App. 200, 519 S.E.2d 536 (1999).

Applied in Murphy v. McIntyre, 69 N.C. App. 323, 317 S.E.2d 397 (1984).

Cited in Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986); Spry v. Winston-Salem/Forsyth County Bd. of Educ., 105 N.C. App. 269, 412 S.E.2d 687 (1992).

OPINIONS OF ATTORNEY GENERAL

Evidentiary Scope of A School Board Hearing. — If a career employee chooses to bypass the case manager hearing, the record before the board in a hearing pursuant to G.S. 115C-325(j2)(3) must include the superintendent's recommendation and grounds for the recommendation as defined in G.S. 115C-325(h)(2), documentary evidence submitted by the superintendent and the employee, the parties' briefs on the law and evidence in the record, and oral arguments. The career employee waives his right to present nondocumentary evidence unless the board exercises its discretion under this section to subpoena additional evidence or testimony that might aid in its decision. See opinion of Attorney General to Mr. L. P. Hornthal, Jr. Hornthal, Riley, Ellis & Maland, LLP, 1997 N.C.A.G. 69 (12/5/97).

Right of Appeal of Nondomiciled Student Wrongfully Denied Enrollment. — A student who is not domiciled in a school system and who is denied enrollment therein, assuming he establishes a prima facie case of entitlement to enrollment, would have a right of an appeal under this section. If a hearing is held pursuant to this section, the minimal requirements of due process will have been met, if not exceeded. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

§ 115C-46. Powers of local boards to regulate parking of motor vehicles.

(a) Any local board of education may adopt reasonable rules and regulations with respect to the parking of motor vehicles and other modes of conveyance on public school grounds and may enforce such rules and regulations. A violation of a rule or regulation concerning parking on public school grounds is an infraction punishable by a penalty of not more than ten dollars ($10.00) unless the regulation provides that the violation is not punishable as an infraction. Rules and regulations adopted hereunder shall be made available for inspection by any person upon request.

(b) Any local board of education may adopt written guidelines governing the individual assignment of parking spaces on school grounds. Such guidelines shall give first priority treatment to the physically handicapped.

(c) Any local board of education, by rules and regulations adopted hereunder, may provide for the registration of motor vehicles and other modes of conveyance maintained, operated or parked on school grounds. Any local board of education, by rules and regulations adopted hereunder, may provide for the issuance of stickers, decals, permits or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on school grounds and may prohibit the forgery, counterfeiting, unauthorized transfer or unauthorized use of them.

(d) Any motor vehicle parked in a parking lot on school grounds, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at each entrance thereto, in violation of the rules and regulations adopted by the local board of education, or any motor vehicle otherwise parked on school grounds in violation of the rules and regulations adopted by the county or city local board of education, may be removed from school grounds to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages. (1979, c. 821; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1239, s. 2; 1983, c. 420, s. 3; 1985, c. 764, s. 37; 1989, c. 644, s. 4.)

Cross References. — As to post-towing procedures, see G.S. 20-219.9 et seq.

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed under G.S. 115C-84.2.

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

G.S. 115C-47(12) is set out twice. See notes.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the School Calendar. — Local boards of education shall determine the school calendar under G.S. 115C-84.2.

(12) **(For final effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For future effective date, see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the

G.S. 115C-47(12) is set out twice. See notes.

State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork required of teachers by the central office.

(18a) To Adopt Rules and Policies Limiting the Noninstructional Duties of Teachers. — Local boards of education shall adopt rules and policies limiting the noninstructional duties assigned to teachers. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason the rules or policies should not be implemented. These rules and policies shall ensure that:

a. Teachers with initial certification are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to develop into skilled professionals;

b. Teachers with 27 or more years of experience are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to informally share their experience and expertise with their colleagues;

c. The noninstructional duties of all teachers are limited to the extent possible given federal, State, and local laws, rules, and policies, and that the noninstructional duties required of teachers are distributed equitably among employees.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302.1(i), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies under G.S. 115C-522(a) and G.S. 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(25a) To Reimburse the Additional Cost of Automobile Liability Coverage for School Social Workers Required to Transport Students. — Unless a local board of education otherwise provides for liability insurance coverage of a school social worker who is required to transport students under G.S. 115C-317.1, a local board of education may require a school social worker who is required to transport students as provided under G.S. 115C-317.1 to increase the liability limits or add a business-use rider, or both, on that employee's personal automobile liability insurance policy for the purpose of transporting students within the course of that employee's work duties, only if the board reimburses the employee for the additional premium charged, up to the maximum additional amount charged to a person with up to two points assessed under the Safe Driver Incentive Plan pursuant to G.S. 58-36-65, for the increased liability limits or the added rider, or both.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Require the Display of the United States and North Carolina Flags, and to Require the Recitation of the Pledge of Allegiance. — Local boards of education shall adopt policies to (i) require the display of the United States and North Carolina flags in each classroom, when available, (ii) require that recitation of the Pledge of Allegiance be scheduled on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Sched-

ules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. — Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's standards developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Notwithstanding this subdivision, each local board shall adopt policies based on the State Board's standards developed under G.S. 115C-12(24). These policies shall apply to any new alternative learning program or alternative school that is implemented beginning with the 2006-2007 school year. Local boards of education are encouraged to apply these standards to alternative learning programs and alternative schools implemented before the 2006-2007 school year.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs comply with the State Board's standards developed under G.S. 115C-12(24) and whether they incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local

business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders, including local chambers of commerce, to encourage employers to include and adopt as part of their stated personnel policies time for employees who are parents or guardians to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81.

(38) To Establish School Improvement Teams. — Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(*l*) and that the composition of the team complies with G.S. 115C-105.27(a). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools.

(39) To Adopt Policies Related to Student Retention Decisions. — Local boards shall adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain students.

(40) To adopt emergency response plans. — Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term "public record" is defined under G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

(41) To Encourage Recycling in Public Schools. — Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools.

(42) Recodified as G.S. 115C-375.3 by Session Laws 2005-22, s. 3(a), effective April 28, 2005.

(43) Local boards of education are encouraged to adopt policies that require superintendents to assign to the core academic courses, in seventh through ninth grades, teachers who have at least four years' teaching experience and who have received within the last three years

an overall rating on a formal evaluation that is at least above standard.

(44) Recodified as G.S. 115C-375.4 by Session Laws 2005-22, s. 4(a), effective April 28, 2005.

(45) To Report Certain Incidents of Seclusion and Restraint. — Local boards of education shall maintain a record of incidents reported under G.S. 115C-391.1(j)(4) and shall provide this information annually to the State Board of Education.

(46) At the discretion of the board, to adopt policies and procedures authorizing schools that operate programs under G.S. 115C-307(c) to utilize unlicensed health care personnel to perform the technical aspects of medication administration to students. If adopted, the policies and procedures shall be consistent with the requirements of Article 9A of Chapter 90 of the General Statutes and shall include the following:

a. Training and competency evaluation of medication aides as provided for under G.S. 131E-270.

b. Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.

c. Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with Articles 5, 6, 10, and 16 of Chapter 131E of the General Statutes.

(47) To Address the Use of Pesticides in Schools. — Local boards of education shall adopt policies that address the use of pesticides in schools. These policies shall:

a. Require the principal or the principal's designee to annually notify the students' parents, guardians, or custodians as well as school staff of the schedule of pesticide use on school property and their right to request notification. Such notification shall be made, to the extent possible, at least 72 hours in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, "relatively nontoxic" (no signal word required on the product's label).

b. **(Effective October 1, 2011)** Require the use of Integrated Pest Management. As used in this sub-subdivision, "Integrated Pest Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.

(48) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. — Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under G.S. 115C-12(33). Local boards of

education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.

(49) To Address Mercury in the Classroom and on School Grounds. — Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

(50) To Address Exposure to Diesel Exhaust Fumes. — Local boards of education shall adopt policies and procedures to reduce students' exposure to diesel emissions.

(51) To Ensure that Schools Provide Information Concerning Cervical Cancer, Cervical Dysplasia, Human Papillomavirus, and the Vaccines Available to Prevent These Diseases. — Local boards of education shall ensure that schools provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information shall be provided at the beginning of the school year to parents of children entering grades five through 12. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and places parents and guardians may obtain additional information and vaccinations for their children.

(52) To Ensure That Certain Students Receive Information Annually on Lawfully Abandoning a Newborn Baby. — Not later than August 1, 2008, local boards of education shall adopt policies to ensure that students in grades nine through 12 receive information annually on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

(53) To Encourage Programs for Successful Transition Between the Middle School and High School Years. — Local boards of education are encouraged to adopt policies to implement programs that assist students in making a successful transition between the middle school and high school years. The programs may include Ninth Grade Academies, programs to effectively prepare eighth grade students for the expectations and rigors of high school, early warning systems to flag students not ready for ninth grade and develop plans for those students, mentoring programs that pair upperclassmen with incoming students, and graduation plans for students who have fallen behind and are off track for graduation.

(54) To Increase Parental Involvement in Student Achievement and Graduation Preparation. — Local boards of education are encouraged to adopt policies to promote and support parental involvement in student learning and achievement at school and at home and to encourage successful progress toward graduation. These policies may include strategies to increase school communications with parents regarding expectations for students and student progress, graduation requirements, and available course offerings, to provide increased opportunities for parental involvement in schools, and to create an environment in the schools conducive for parental involvement.

(55) To Reduce Suspension and Expulsion Rates and Provide for Academic Progress During Suspensions. — Local boards of education are encouraged to adopt policies and best practices to reduce suspension

and expulsion rates and to provide alternative learning programs for continued academic progress for students who have been suspended.

(56) To Notify Parents or Legal Guardians of Students Alleged to be Victims of Acts Required to be Reported to Law Enforcement and the Superintendent. — Local boards of education shall adopt a policy on the notification to parents or legal guardians of any students alleged to be victims of any act that is required to be reported to law enforcement and the superintendent under G.S. 115C-288(g).

(57) To adopt a code of ethics. — Local boards of education shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-86.

(58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. — Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or otherwise.

(59) To Encourage Student Voter Registration and Preregistration. — Local boards of education are encouraged to adopt policies to promote student voter registration and preregistration. These policies may include collaboration with county boards of elections to conduct voter registration and preregistration in high schools. Completion and submission of voter registration or preregistration forms shall not be a course requirement or graded assignment for students. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17; 1997-443, s. 8.38(j)-(l); 1998-194, s. 3; 1998-202, s. 12; 1999-96, s. 7; 1999-237, s. 8.25(a); 1999-373, s. 3; 1999-397, s. 4; 1999-456, s. 35; 2000-67, s. 8.18(b); 2000-140, s. 77; 2001-424, s. 28.17(c); 2001-500, s. 3; 2001-512, s. 12; 2002-103, s. 2; 2002-178, s. 3; 2003-147, s. 4; 2004-118, s. 2; 2004-203, s. 72(b); 2005-22, ss. 3(a), 4(a); 2005-205, s. 5; 2005-276, s. 10.40D(f); 2005-355, s. 2; 2005-446, s. 3; 2006-137, s. 1; 2006-143, s. 2; 2007-59, s. 1; 2007-126, s. 1; 2009-223, s. 1; 2009-330, ss. 1, 2; 2009-403, s. 2; 2009-410, s. 2; 2009-451, s. 7.28; 2009-541, s. 29(a).)

Subdivision (12) Set Out Twice. — The first version of subdivision (12) set out above is effective until the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. The second version of subdivision (12) set out above is effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. See Session Laws 1985, c. 479, s. 55(c)(6).

Cross References. — As to the rules of the local board governing the conduct of principals and supervisors, see G.S. 115C-286. As to the rules of the local board governing the conduct of teachers, see G.S. 115C-308.

Recycling. — Session Laws 2001-512, s. 11, provides: "The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by December 15 of the years 2003 through 2007, on the recycling efforts of the public schools in the State. These reports shall include information provided by local school administrative units on the number of public schools that have recycling programs and the types of recyclable materials that are collected. If the Joint Legislative Education Oversight Committee or the Environmental Review Commission determines that sufficient progress in establishing recycling programs in the public schools of the State has not been made by January 1, 2008, the Committee or Commission shall recommend legislation to the 2008 Regular Session of the 2007 General Assembly to continue the reporting requirement established by this section [s. 11 of Session Laws 2001-512].

Certification as E-Procurement Compliant. — Session Laws 2003-147, s. 10(a) through (e), contains provisions encouraging local school administrative units to use the NC E-Procurement Service for their purchasing requirements. See same catchline in note to G.S. 115C-522.

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See note at G.S. 115C-105.20.

Editor's Note. — Session Laws 1985, c. 479, which in ss. 55(c)(4) and 55(c)(6) amended subdivision (12) of this section, provided in 55(c)(8) and (c)(9):

"(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

This section was amended by Session Laws 1993 (Reg. Sess., 1994), c. 716, s. 2 in the coded bill drafting format provided by G.S. 120-20.1. The act failed to incorporate the changes made to subdivision (24) by Session Laws 1993, c. 114, s. 1 and failed to include subdivision (36), as added by Session Laws 1993, c. 321, s. 139. Subdivisions (24) and (36) have been set out as above at the direction of the Revisor of Statutes. The new subdivision added by Session Laws 1993 (Reg. Sess., 1994), c. 716, s. 2 has been renumbered subdivision (37) at the direction of the Revisor of Statutes.

Session Laws 2001-500, s. 3, added a subdivision (40) relating to emergency response plans. Session Laws 2001-512, s. 12, added a different subdivision (40) relating to recycling in schools. Subdivision (40) as added by Session Laws 2001-512, s. 12 was renumbered as subdivision (41) at the direction of the Revisor of Statutes.

Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

Session Laws 2002-103, s. 2, and Session Laws 2002-178, s. 3, each added a subdivision (42) to this section. The subdivision (42) as added by Session Laws 2002-178, s. 3, has been renumbered as subdivision (43) at the direction of the Revisor of Statutes.

Session Laws 2002-180, s. 8.2, provides that the Joint Legislative Education Oversight Committee may study issues regarding the recruitment and retention of teaching personnel in the public schools. If it undertakes this study, the Committee shall recommend ways to remove barriers and improve the ability of Local Education Agencies to recruit quality teachers, retain teachers currently employed by the LEAs, and attract second career teachers to positions in the public schools. Issues that may be addressed in this study include enhancing or weighting the current salary schedule to increase the salary for first year teachers; granting licensure reciprocity to teachers who have been tested and licensed in other states; developing alternative licensure opportunities to attract second career teachers; providing tuition support for alternative licensure candidates; providing training for alternative licensure candidates through the community college system; processing initial licensure requests at the local level; expanding teacher-training programs in the State in order to produce more teachers; strategies for expanding the pool of qualified teachers; and using recruitment and retention incentives to attract and retain high-quality teachers, especially in low-performing schools and in fields of certification in which there are shortages of teachers.

Session Laws 2003-147, s. 11, provides: "Nothing in this act [giving local boards of education additional purchasing flexibility and encouraging them to use the NC E-Procurement Service] shall be construed to limit the authority of the Department of Administration to develop, implement, and monitor a pilot program for reverse auctions for public school systems as provided in Section 3 of Chapter 107 of the 2002 Session Laws."

Session Laws 2003-147, s. 12, as amended by 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Session Laws 2004-203, s. 7 provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and

(iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2005-22, ss. 3(a) and (4)(a), effective April 28, 2005, recodified subdivisions (42) and (44) as G.S. 115C-375.3 and G.S. 115C-375.4, respectively.

Session Laws 2005-276, ss. 7.61(a) and (b), provide: "(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

"(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-446, s. 4, provides: "Before implementing success centers or any other alternative learning program or alternative school in New Hanover County, the New Hanover Board of Education shall comply with G.S. 115C-105.47A established in Section 2 of this act. The State Board of Education shall submit to the Joint Legislative Education Oversight Committee a copy of the proposal submitted by the New Hanover Board of Education and a copy of any recommendations made by the State Board."

Session Laws 2005-446, s. 5, provides: "Nothing in this act requires the North Carolina General Assembly to appropriate funds for the implementation of alternative learning programs or alternative schools."

Session Laws 2006-143, s. 4, made the amendments to this section by Session Laws 2006-143, s. 2, effective October 1, 2006, except for sub-subdivision (47)b., which becomes effective October 1, 2011.

Session Laws 2006-143, s. 3, provides: "Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees."

Session Laws 2007-59, s. 6, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 7, provides: "This act becomes effective July 1, 2007, and applies beginning with the 2007-2008 school year. However, during the 2007-2008 school year, year-round schools may comply with the provisions of this act by providing the required information no later than September 1, 2007."

This section was amended in the coded bill drafting format by Session Laws 2006-143, s. 2, Session Laws 2007-59, s. 1, and Session Laws 2007-126, s. 1. Those acts failed to incorporate previous amendments to this section made by Session Laws 2005-205 and Session Laws 2005-276. At the direction of the Revisor of Statutes, subdivisions (45) through (48), as added by Session Laws 2006-143, s. 2, have been renumbered as subdivisions (47) through (50), subdivision (49), as added by Session Laws 2007-59, s. 1, has been renumbered as subdivision (51), and subdivision (50), as added by Session Laws 2007-126, s. 1, has been renumbered as subdivision (52).

Session Laws 2008-187, s. 45.8, amended this section contingent on the enactment of House Bill 359, 2007 Regular Session. House Bill 359 was not enacted.

Subdivision (58) as added by Session Laws 2009-541, s. 29(a), was redesignated as subdivision (59) by the Revisor of Statutes.

Session Laws 2009-403, s. 7, provides: "The resolution or policy containing a code of ethics that is required by G.S. 160A-86 hall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy."

Session Laws 2009-403, s. 8, provides: "Except as otherwise provided in this act, this act becomes effective January 1, 2010. All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-143, s. 2, added subdivisions (45) through (48). For effective date, see Editor's note.

Session Laws 2007-59, s. 1, effective July 1, 2007, added subdivision (49). See Editor's note for applicability.

Session Laws 2007-126, s. 1, effective June 27, 2007, and applicable beginning with the 2008-2009 school year, added subdivision (50).

Session Laws 2009-223, s. 1, effective June 30, 2009, and applicable beginning with the 2009-2010 school year, inserted "and that the composition of the team complies with G.S. 115C-105-27(a)" at the end of the first sentence in subdivision (38).

Session Laws 2009-330, ss. 1 and 2, effective July 24, 2009, rewrote the second paragraph of subdivision (34), and added subdivisions (53) through (55).

Session Laws 2009-403, s. 2, effective January 1, 2010, added subdivision (57).

Session Laws 2009-410, s. 2, effective August 5, 2009, and applicable beginning with the 2010-2011 school year, added subdivision (56).

Session Laws 2009-451, s. 7.28, effective July 1, 2009, added subdivision (58).

Session Laws 2009-541, s. 29(a), effective January 1, 2010, and applicable beginning with the 2010-2011 school year, added subdivision (59).

Legal Periodicals. — For note suggesting that moment of silence statutes may threaten the wall of separation between church and state, in light of Wallace v. Jaffree, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29 (1985), see 8 Campbell L. Rev. 125 (1985).

For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

For article, "Leandro v. State and the Constitutional Limitation on School Suspensions and Expulsions in North Carolina" see 83 N.C. L. Rev. 1507 (2005).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Purpose. — Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

Purpose of 1990 Amendments. — Through the 1990 amendments to G.S. 115C-98 and this section, the General Assembly made clear what the statutes already provided — that decisions concerning the procurement of supplementary instructional materials, including those which involve commercial advertising, are to be made exclusively by the local school boards without having to seek approval of the State Board. State v. Whittle Communications, 328 N.C. 456, 402 S.E.2d 556 (1991).

Sound Basic Education Defined. — For purposes of our Constitution, a sound basic education will provide the student with at least: (1) sufficient ability to read, write, and speak English and a sufficient knowledge of fundamental math and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices regarding personal issues or issues that affect the community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; (4) and sufficient academic and social skills to enable the student to compete on an equal basis with others in further formal education or gainful employment. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

Equal Funding Not Required. — Although the State Constitution requires that access to a sound basic education be provided equally in every school district, the equal opportunities clause of Article IX, Section 2(1) does not require substantially equal funding or educational advantages in all school districts. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

As to discretion of local boards to locate, discontinue, transfer and establish schools, see Clark v. McQueen, 195 N.C. 714, 143 S.E. 528 (1928).

Selection of School Sites. — The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. McInnish v. Board of Educ., 187 N.C. 494, 122 S.E. 182 (1924).

The board of education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the board, and its discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

The phrase "without assuming liability therefor" in subsection (d) of former G.S. 115-35 (see subdivision (4) of this section) was inserted for the purpose of making it clear that governing authorities were not waiving governmental immunity from torts, and does not restrict the power of such boards to contract for transportation or other required items necessary in connection with duly approved interscholastic activities. State ex rel. N.C. Utils. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

Power to Establish School Calendar. — G.S. 115C-47(11) authorized a board of education to determine the school calendar under G.S. 115C-84.2, which did not bar year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

County board of education can assign students to year-round schools without parental consent because the General Assembly has conferred broad, specific, and sole authority upon local school boards to determine school calendars; a board's action in converting traditional calendar schools to year-round calendar schools comports with its duty under G.S. 115C-47(1) and (10) to provide a school system adequate to the needs of increasing student enrollment while assuring appropriate class sizes in its schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

Where the county purchasing agent purchases equipment for a school and gives a note for the same, signed by him in the name of the school, the county is not liable on the note, the purchasing agent having no connection with the county board of education. Keith v. Henderson County, 204 N.C. 21, 167 S.E. 481 (1933).

The courts may compel a county board of education to act upon discretionary powers conferred on them by the legislature, but cannot tell them how they must act. Key v. Board of Educ., 170 N.C. 123, 86 S.E. 1002 (1915).

Criteria for Renewal of Contract of Probationary Teacher Who Serves as Coach. — Given the broad legislative grant of authority over the status of probationary teachers and the legislative grant to local boards under subdivision (4) of this section, requiring them to promulgate rules and regulations for interscholastic athletics, a board may properly consider coaching changes as a basis for determining whether to renew a probationary teacher's contract when the teacher also serves as a coach. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

Cited in Craig v. Buncombe County Bd. of Educ., 80 N.C. App. 683, 343 S.E.2d 222 (1986); N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

Determination of School and Work Hours. — Section 115C-47(11) and former G.S. 115C-84(a)(see now G.S. 115C-84.2) give local boards of education authority over the length of the school day for students, but do not give local boards authority to establish the length of the work day for State funded employees. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

Regulations as to Transfers to Participate in Interscholastic Athletics. — The eligibility of students who transfer from one school system to another to participate in interscholastic athletics is governed by State Board of Education regulations which are made binding upon local boards of education by subsection (4) and cannot be altered by local boards as a part of a transfer agreement. See opinion of Attorney General to Mr. Don W. Viets, Jr., Attorney, Whiteville City School System, 55 N.C.A.G. 11 (1985).

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

State is not prohibited from purchasing

day care services from day care programs operated by public schools, even though those programs are not licensed by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

§ 115C-48. Penalties for certain conduct.

(a) Members of local boards of education are criminally liable for certain conduct as provided in G.S. 14-234.

(b) Members of local boards of education are civilly liable for certain conduct as provided in G.S. 115C-441. (1981, c. 423, s. 1; 1995, c. 509, s. 60; 2001-409, s. 4.)

Editor's Note. — Session Laws 2001-409, which amended this section, provides in s. 10, that prosecutions for offenses committed before the effective dates of the provisions of the act are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

§ 115C-49: Repealed by Session Laws 1995, c. 501, s. 1.

§ 115C-50. Training of board members.

(a) All members of local boards of education, whether elected or appointed, shall receive a minimum of 12 clock hours of training annually. The 12 clock hours of training may include the ethics education required by G.S. 160A-87.

(b) The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education.

(c) The training may be provided by the North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education. (1991, c. 689, s. 200(d); 2006-264, s. 29(h); 2009-403, s. 3.)

Editor's Note. — Session Laws 2009-403, s. 8, provides: "Except as otherwise provided in this act, this act becomes effective January 1, 2010. All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

Effect of Amendments. — Session Laws 2009-403, s. 3, effective January 1, 2010, inserted subsection designations; in subsection (a), inserted "whether elected or appointed" and added the second sentence.

§ 115C-51. Public comment period during regular meetings.

The local board of education shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month. (2005-170, s. 1.)

§§ 115C-52, 115C-53: Reserved for future codification purposes.

Article 6.

Advisory Councils.

§ 115C-54: Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 1.

§ 115C-55. Advisory councils.

A board of education may appoint an advisory council for any school or schools within the local school administrative unit. The purpose and function of an advisory council shall be to serve in an advisory capacity to the board on matters affecting the school or schools for which it is appointed. The organization, terms, composition and regulations for the operation of such advisory council shall be determined by the board. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2; 1965, c. 584, s. 8; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Board of Education May Remove Member of Advisory Council at Will. — See opinion of Attorney General to Mr. Ferd L. Davis, Attorney, Wake County Board of Education, 40 N.C.A.G. 200 (1969).

§§ 115C-56 through 115C-59: Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 1.

§§ 115C-60 through 115C-64: Reserved for future codification purposes.

Article 6A.

State Assistance and Intervention in Low Performing School Units.

§§ 115C-64.1 through 115C-64.5: Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 4.

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

Article 7.

Organization of Schools.

§ 115C-65. State divided into districts.

The State of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:

First District

Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

Second District

Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.

Third District

Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.

Fourth District

Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.

Fifth District

Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.

Sixth District

Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.

Seventh District

Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.

Eighth District

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (1955, c. 1372, art. 1, s. 3; 1981, c. 423, s. 1.)

§ 115C-66. Administrative units classified.

Each county of the State shall be classified as a county school administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city school administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All local school administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way.

For purposes of eligibility for federal grant funds, the Department of Health and Human Services is hereby classified as a public authority, which is the school administrative agency for the schools that it operates, and shall be considered as such by the State school authorities in the administration and distribution of federal grant funds. (1955, c. 1372, art. 1, s. 4; 1981, c. 423, s. 1; 2005-276, s. 7.54(b).)

Cross References. — As to liability insurance and immunity of local boards of education, see G.S. 115C-42.

Editor's Note. — Session Laws 2005-276, s. 7.54(a), provides: "It is the intent of the General Assembly that the schools operated by the Department of Health and Human Services participate in federal funding to the same degree as other public schools in the State. The Department of Public Instruction shall ensure that the Department of Health and Human Services schools receive a proportionate share of federal funds for public schools."

Session Laws 2005-276, s. 7.54(c), provides: "The Department of Health and Human Services shall report on the use, type, and amount of funds received from federal funding and other Department of Public Instruction funding under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by January 31, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Editor's Note. — Some of the cases below were decided under corresponding provisions of former Chapter 115.

An "administrative unit" is not a "school district" within the meaning of former N.C. Const., Art. II, § 29 (now N.C. Const., Art. II, § 24). Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

Suit Against Administrative School Unit. — A city administrative school unit may be sued only when and as authorized by statute, and may not be held liable for torts committed by its trustees or employees. Smith v. Hefner, 235 N.C. 1, 68 S.E.2d 783 (1952).

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-67. Merger of units in same county.

City school administrative units may be consolidated and merged with contiguous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

(1) The name by which the merged school administrative unit shall be identified and known.

(2) The effective date of the merger.

(3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including:

  a. The termination of any terms of office proposed in the reorganization of the board.

  b. The method of constituting and continuing the board of education; the manner of selection of board members, including (i) the number of members of the board, (ii) the method of their election or appointment, (iii) whether members shall be nominated, elected, or appointed from districts or at large, (iv) the manner of determining the nominee, and (v) whether the election shall be partisan or nonpartisan; the length of the members' terms of office; the dates of induction into office; the organization of the board; the procedure for filling vacancies; and the compensation to be paid members of the board for expenses incurred in performance of their duties. To the extent that the method conflicts with G.S. 115C-35, G.S. 115C-37, or with any local act concerning any of the units being merged and consolidated, the plan of merger and consolidation shall prevail.

(4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes.

(5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit.

(6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all local school administrative units involved.

(7) A public hearing, which shall have been announced at least 10 days prior to the hearing, on the proposed plan of merger.

(8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area.

(9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the local school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received, the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education, the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city school administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969, are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 767, s. 3.)

Local Modification. — Monroe City School Administrative Unit: 1983, c. 475; Union County School Administrative Unit: 1983, c. 475.

CASE NOTES

Applied in Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were rendered under corresponding provisions of former Chapter 115.*

Contents of Plan of Merger and Effect Thereof. — The plan of merger may include a provision that candidates for the merged board be elected on a nonpartisan basis in a partisan election. If the merger is brought about the city school board would have no further authority after the merger and would be dissolved by operation of law, while if the school units are merged and the city unit no longer exists, the supplemental tax heretofore approved may still be levied and turned over to the merged board for administrative purposes within the area formerly recognized as the city administrative unit. See opinion of the Attorney General to Mr. R.A. Collier, Sr., Attorney for Statesville City School Board, 40 N.C.A.G. 221 (1969).

Effect of Merger of County and City Unit on Supplemental Taxes in Effect in Each Unit. — See opinion of Attorney General to Mr. Thomas A. Banks, Wake County Attorney, 40 N.C.A.G. 228 (1970).

§ 115C-68. Merger of units in adjoining counties.

(a) Boards of education of contiguous counties or boards of education in a group of counties in which each county is contiguous with at least one other county in the group, and any city school administrative unit located in counties to be merged, may merge school administrative units upon approval by the State Board of Education of a written plan for merger submitted by the boards of education involved and bearing the approval of the tax-levying body for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G.S. 115C-67 (providing for the merger of units in the same county), and shall contain any other provision deemed necessary or appropriate by the State Board of Education or the local boards of education for the merger of school units in two or more counties.

(b) The plan of merger, including any arrangements for financing or taxing for the schools in the new local school administrative unit, may be, but is not required to be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for the purpose of approving these matters. Such elections or referendums, if held, shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507. Each board of county commissioners shall have authority to have such elections or referendums conducted by the board of elections of its county under the provisions set forth in G.S. 115C-507.

(c) If twenty percent (20%) of the qualified voters of a county to be merged petition the board of county commissioners of their county for an election as to whether their county shall be included in the proposed merger, the board of county commissioners shall call an election on this question for its county under the provisions of G.S. 115C-507. The petition must be submitted to the board of county commissioners within 10 days following the public hearing required by G.S. 115C-67 on the proposed plan of merger. The board of county commissioners shall have authority to have such an election conducted by the board of election of its county under the provisions set forth in G.S. 115C-507.

(d) Boards of education considering a merger of two or more counties may spend money necessary for studying and preparing for such a merger. (1969, c. 828; 1981, c. 423, s. 1.)

Local Modification. — Edgecombe and Nash, city of Rocky Mount, and town of Tarboro: 1987, c. 534.

§ 115C-68.1. Merger of units by the board of commissioners.

(a) The board of commissioners of a county in which two or more local school administrative units are located, but all are located wholly within the county, may adopt a plan for the consolidation and merger of the units into a single countywide unit.

The plan adopted under this subsection shall require that the county adopting the plan provide local funding per average daily membership to the resulting local school administrative unit for subsequent years of at least the highest level of any local school administrative unit in the county during the preceding five fiscal years before the merger.

The board of commissioners shall forward a copy of the plan it adopts to the boards of education of all local school administrative units located within the county, immediately upon adoption.

(b) The boards of commissioners of two counties in which one local school administrative unit is located in both counties may jointly adopt plans for each of their counties, including a plan of consolidation and merger for such unit that is located in more than one county. The results of such consolidation and merger shall be that there is only one countywide local school administrative unit in each county, or that the entirety of the unit located within two counties is merged and consolidated with the county unit of one of the two counties. Such plans shall also merge and consolidate any other city school administrative unit located wholly within one of the two counties. Within the two-county area, all the plans shall take effect on the same day.

The plans jointly adopted under this subsection shall require that the counties jointly adopting the plans provide local funding per average daily membership to the resulting local school administrative units for subsequent fiscal years of at least the highest level of any local school administrative unit being merged during the preceding five fiscal years before the merger.

The boards of commissioners of each of the two counties shall forward copies of the plans they adopt to the boards of education of all local school administrative units located within the county, immediately upon adoption.

(c) The plans under this section shall be prepared and approved in accordance with G.S. 115C-67 as provided by general law, or G.S. 115C-68 as provided by general law, as applicable, except that the county and city boards of education shall not participate by preparing, entering into, submitting, or agreeing to a plan, and the plan shall not be contingent upon approval of the voters.

(d) For the purpose of this section, local funding per average daily membership means the budgeted local expense per average daily membership. The State Board of Education shall establish guidelines for the computation of this amount and the amount shall be set out in the plan for consolidation and merger.

(e) If the State Board of Education fails to approve a plan submitted to it under this section, such failure to approve does not preclude the approval of the plan by the General Assembly by local act. (1991, c. 689, s. 37(b).)

CASE NOTES

Merger. — Session law which created a school district did not give the district authority to expand into an adjacent county when a town expanded into that county, and because the school system was located in only one county, the North Carolina State Board of Education was not required to obtain approval from county commissioners who governed the adjacent county before it approved a plan to merge three school systems. Kings Mt. Bd. of Educ. v. N.C. State Bd. of Educ., 159 N.C. App. 568, 583 S.E.2d 629, 2003 N.C. App. LEXIS 1509 (2003).

Election Enjoined to Prevent Discriminatory Merge. — White voters of Durham County were held entitled to a temporary restraining order to enjoin the election of the public school board pursuant to a districting plan designed to merge people of a particular race within voting districts in a discriminatory manner. Cannon v. North Carolina State Bd. of Educ., 917 F. Supp. 387 (E.D.N.C. 1996), aff'd, 129 F.3d 116 (4th Cir. 1997).

Cited in Cannon v. Durham County Bd. of Elections, 959 F. Supp. 289 (E.D.N.C. 1997).

§ 115C-68.2. Merger of units by the local boards of education.

If a city board of education notifies the State Board of Education that it is dissolving itself, the State Board of Education shall adopt a plan of consolidation and merger of that city school administrative unit with the county school administrative unit in the county in which the city unit is located; provided, however, if a city school administrative unit located in more than one county notifies the State Board of Education that it is dissolving itself, the State Board shall adopt a plan that divides the city unit along the county line and consolidates and merges the part of the city unit in each county with the county unit in that county and the plans shall take effect on the same day. The plans shall be prepared and approved in accordance with G.S. 115C-67 as provided by general law, and G.S. 115C-68 as provided by general law, as applicable, except that the county and city boards of education and the boards of commissioners shall not participate by preparing, entering into, submitting, or agreeing to a plan, and the plan shall not be contingent upon approval by the voters. (1991, c. 689, s. 37(c).)

§ 115C-68.3. Validation of plans of consolidation and merger.

All plans for consolidation and merger of school administrative units entered into between June 9, 1969, and May 26, 1992, under G.S. 115C-67, 115C-68.1, 115C-68.2, former G.S. 115-74.1, or under any local act authorizing such mergers, are ratified and considered to have been adopted by act of the General Assembly. This Article prevails over G.S. 153A-76(4). (1991 (Reg. Sess., 1992), c. 767, s. 2; c. 1030, s. 51.2.)

§ 115C-69. Types of districts defined.

The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be three different kinds of districts:

(1) The "nontax district" is a territorial division of a local school administrative unit under the control of the local board of education, having no special local tax fund voted by the people for supplementing State and county funds.

(2) The "local tax district" is a territorial division of a local school administrative unit under the control of the local board of education, having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds.

(3) The "administrative district" is a territorial division of a county school administrative unit under the control of a county board of education which is established for administrative purposes and which consists of any combination of one or more local tax districts, nontax areas or bond districts of the county school administrative unit. (1955, c. 1372, art. 1, s. 7; 1965, c. 584, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 12.)

CASE NOTES

***Editor's Note.** — Most of the cases below were decided under corresponding provisions of former Chapter 115.*

A "school district" is an area within a county in which one or more public schools must be maintained. Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

As to equivalent of township, see Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Applied in Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-70: Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

§ 115C-71. Districts formed from portions of contiguous counties.

School districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. Rules for the organization, support and operation of districts so formed are subject to the agreement of the boards of education concerned, and as a guide to the working out of such agreements the formulas contained in G.S. 115C-510 should be followed as far as applicable. (1955, c. 1372, art. 8, s. 2; 1981, c. 423, s. 1.)

§ 115C-72. Consolidation of districts and discontinuance of schools.

(a) Local boards of education shall have the power and authority to close or consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the closing or consolidation will better serve the educational interest of the local school administrative unit or any part of it.

In determining whether two or more public schools shall be consolidated, or in determining whether or not a school shall be closed and the pupils transferred therefrom, local boards of education of the several counties shall observe and be bound by the following rules:

(1) In any question involving the closing or consolidation of any public school, the local board of education of the school administrative unit in which such school is located shall cause a thorough study of such school to be made, having in mind primarily the welfare of the students to be affected by a proposed closing or consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such closing or consolidation, the cost of providing additional school facilities in the event of such closing or consolidation, and such other factors as the board shall consider germane. Before the entry of any order of closing or consolidation, the local board of education shall provide for a public hearing in regard to such proposed closing or consolidation, at which hearing the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said board may, in the exercise of its discretion, approve the closing or consolidation proposed.

(2) The provisions of this section shall not deprive any local board of education of the authority to assign or enroll any and all pupils in schools in accordance with the provisions of G.S. 115C-366(b) and 115C-367 to 115C-370.

(b) This section does not govern merger of a city school administrative unit with another school administrative unit. Such merger is governed by G.S. 115C-67. (1955, c. 1372, art. 8, s. 3; 1981, c. 423, s. 1; 1983, c. 308; c. 752; 2009-570, s. 27.)

Effect of Amendments. — Session Laws 2009-570, s. 27, effective August 28, 2009, substituted "judgment" for "judgement" in the first paragraph of subsection (a).

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Statute requires only that a public hearing be provided; it does not specify any particular form, location, or notice for such hearing. Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

Discretion as to Location of School Vested in Board of Education. — Whether a change should be made in the location of the school, as well as the selection of the site for a new one, is vested in the sound discretion of the board of education. Its action cannot be restrained by the courts unless there has been a violation of some provision of law or a manifest abuse of discretion. Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972); Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

For cases in which compliance with applicable statutory provisions was held sufficient, see Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966); Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

Summary judgment on the basis of laches was appropriate in favor of defendant school board which entered into contracts that included options to purchase land for the consolidated schools in compliance with the results of its own vote to consolidate and with the passage of the school bond issue in a general election, while plaintiff taxpayer and citizens group waited to file suit challenging the defendant's compliance with G.S. 115C-72. Save our Schs. of Bladen County, Inc. v. Bladen County Bd. of Educ., 140 N.C. App. 233, 535 S.E.2d 906, 2000 N.C. App. LEXIS 1109 (2000).

Decisions Under Former Statutes. — As to constitutionality of former statute, see Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924).

As to consolidation of tax and nontax districts, see Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922); Perry v. Board of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Barnes v. Leonard, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Gates School Dist. Comm. v. Gates County Bd. of Educ., 235 N.C. 212, 69 S.E.2d 529 (1952); Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952).

As to issuance of bonds, see Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922).

As to reallocation of funds from bond issues, see Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950).

As to consolidation as prerequisite to closing high school operated as union school, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

As to providing ample facilities in consolidated district, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

As to discretionary authority of county board of education, see Davenport v. Board of Educ., 183 N.C. 570, 112 S.E. 246 (1922); Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950).

As to enjoining or setting aside creation or consolidation of school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952).

As to circumstances insufficient to show abuse of discretion in consolidating school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952).

As to transfer of pupils, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800, rehearing denied, 235 N.C. 758, 69 S.E.2d 721 (1952).

§ 115C-73. Enlarging tax districts and city units by permanently attaching contiguous property.

The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city school administrative units, real property contiguous to said local tax districts or city school administrative units, upon the written petition of the owners thereof and the taxpayers of the families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit: Provided, the petition must be signed by a majority of the persons who are the owners thereof and a majority of the taxpayers of the families living on such real property on the date the petition is filed with the county board of education: Provided, further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section: Provided, further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 60 days after the approval of such transfer is given by the State Board of Education.

Any qualified voter residing in the area attached shall be permitted to vote in any election for members of the board of education having jurisdiction over the attached area. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4; 1971, c. 672; 1973, c. 1155; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 13.)

§ 115C-74. School system defined.

The school system of each local school administrative unit shall consist of 12 years of study or grades, and shall be graded on the basis of a school year of not less than nine months. Schools within the system may be organized in the discretion of the local board of education. (1955, c. 1372, art. 1, s. 5; 1959, c. 573, s. 1; 1981, c. 423, s. 1; 2001-97, s. 1.)

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-75. Recommended school classification.

(a) The different types of public schools are classified and defined as follows:

(1) An "elementary school" is a school that includes all or part of the first through eighth grade and that may have a kindergarten or other early childhood program.

(2) A "high school" is a school that includes all or part of grades nine through 12 and that offers at least the minimum high school course of study prescribed by the State Board of Education.

(3) Repealed by Session Laws 2001-97, s. 2, effective July 1, 2001.

(4) A "junior high school" is a school that includes all or part of grades seven through nine.

(4a) A "middle school" is a school that includes all or part of grades six through nine.

(5) A "senior high school" is a school that includes the tenth, eleventh and twelfth grades.

(6) A "union school" is a school that includes elementary, middle, and high school grades.

(b) The school classifications in subsection (a) of this section are recommendations only and do not prohibit local boards of education from classifying schools in other ways. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1; 1963, c. 448, s. 24; 1969, c. 1213, s. 2; 1981, c. 423, s. 1; 2001-97, s. 2.)

§§ 115C-76 through 115C-80: Reserved for future codification purposes.

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1995.

It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education.

Instruction in vocational and technical education under the Basic Education Program shall be based on factors including:

(1) The integration of academic and vocational and technical education;
(2) A sequential course of study leading to both academic and occupational competencies;
(3) Increased student work skill attainment and job placement;
(4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training; and
(5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter.

(a2) Repealed by Session Laws 1995, c. 534, s. 1.

(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.
(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.
(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as outlined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.
(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.
(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.
(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.
(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in ongoing evaluations with the Department of Public Instruction.
(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year.
(9) Repealed by Session Laws 2005-155, s. 2, effective July 5, 2005.

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:
  a. Reaches all students in all grades;
  b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;
  c. Reflects current research and theory;
  d. Includes all abusable substances;
  e. Utilizes information that is current and accurate;
  f. Involves students in active "hands-on" learning experiences;
  g. Integrates substance abuse education with other health and social issues and other subject and skill areas of the North Carolina Basic Education Program and Standard Course of Study;
  h. Promotes understanding and respect for the law and values of society;
  i. Encourages health, safe, and responsible attitudes and behaviors;
  j. Includes strategies to involve parents, family members, and the community;
  k. Includes information on intervention and treatment services;
  l. Is continually open to revision, expansion and improvement.

(a4) Conflict Resolution and Mediation Models: The State Board of Education shall develop a list of recommended conflict resolution and mediation materials, models, and curricula that address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation and shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year. In developing this list, the Board shall emphasize materials, models, and curricula that currently are being used in North Carolina and that the Board determines to be effective. The Board shall include at least one model that includes instruction and guidance for the voluntary implementation of peer mediation programs and one model that provides instruction and guidance for teachers concerning the integration of conflict resolution and mediation lessons into the existing classroom curriculum.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of children;
(2) A set of competencies, by grade level, for each curriculum area;
(3) A list of textbooks for use in providing the curriculum;
(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with disabilities and, in particular, include appropriate modifications;
(5) A program of remedial education;
(6) Required support programs;
(7) A definition of the instructional day;
(8) Class size recommendations and requirements;
(9) Prescribed staffing allotment ratios;
(10) Material and equipment allotment ratios;
(11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and

(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

The State Board shall not require any student to prepare a high school graduation project as a condition of graduation from high school prior to July 1, 2011; local boards of education may, however, require their students to complete a high school graduation project.

(b1) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide to all students one yearlong course of instruction on North Carolina history and geography in elementary school and one yearlong course of instruction in middle school on North Carolina history with United States history integrated into this instruction. The course of instruction shall include contributions to the history and geography of the State and the nation by the racial and ethnic groups that have contributed to the development and diversity of the State and nation. Each course of instruction may include up to two weeks of instruction relating to the local area in which the students reside.

(c) **(For final effective date, see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(c) **(For future effective date, see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the Basic Education Program, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, and the dangers of harmful or illegal drugs, including alcohol.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education Program.

(e) Repealed by Session Laws 1995, c. 534, s. 2.

(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education", "health education", "family living", "health", "healthful living curriculum", or "self-esteem":

a. Mental and emotional health;
b. Drug and alcohol abuse prevention;
c. Nutrition;
d. Dental health;
e. Environmental health;
f. Family living;
g. Consumer health;
h. Disease control;
i. Growth and development;
j. First aid and emergency care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross;
k. Preventing sexually transmitted diseases, including HIV/AIDS, and other communicable diseases;
l. Reproductive health and safety education; and
m. Bicycle safety.

As used in this subsection, "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome.

(2) The State Board of Education shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs. The State Board of Education shall adopt objectives for the instruction of the subject areas listed in subdivision (1) of this subsection that are appropriate for each grade level. In addition, the State Board shall approve textbooks and other materials incorporating these objectives that local school administrative units may purchase with State funds. The State Board of Education, through the Department of Public Instruction, shall, on a regular basis, review materials related to these objectives, and distribute these reviews to local school administrative units for their information.

(3) Repealed by Session Laws 2009-213, s. 3, effective June 30, 2009, and applicable beginning with the 2010-2011 school year.

(4) Each local school administrative unit shall provide a reproductive health and safety education program commencing in the seventh grade that includes the following instruction:

a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children.
b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement.
c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity.
d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including HIV/AIDS, and other associated health and emotional problems.
e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including HIV/AIDS.
f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity.
g. Provides opportunities that allow for interaction between the parent or legal guardian and the student.

h. Provides factually accurate biological or pathological information that is related to the human reproductive system.

Materials used in this instruction shall be age appropriate for use with students. Information conveyed during the instruction shall be objective and based upon scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education.

(4a) Each local school administrative unit shall also include as part of the instruction required under subdivision (4) of this subsection the following instruction:

a. Teaches about sexually transmitted diseases. Instruction shall include how sexually transmitted diseases are and are not transmitted, the effectiveness and safety of all federal Food and Drug Administration (FDA)-approved methods of reducing the risk of contracting sexually transmitted diseases, and information on local resources for testing and medical care for sexually transmitted diseases. Instruction shall include the rates of infection among pre-teen and teens of each known sexually transmitted disease and the effects of contracting each sexually transmitted disease. In particular, the instruction shall include information about the effects of contracting the Human Papilloma Virus, including sterility and cervical cancer.

b. Teaches about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy.

c. Teaches awareness of sexual assault, sexual abuse, and risk reduction. The instruction and materials shall:

1. Focus on healthy relationships.
2. Teach students what constitutes sexual assault and sexual abuse, the causes of those behaviors, and risk reduction.
3. Inform students about resources and reporting procedures if they experience sexual assault or sexual abuse.
4. Examine common misconceptions and stereotypes about sexual assault and sexual abuse.

Materials used in this instruction shall be age appropriate for use with students. Information conveyed during the instruction shall be objective and based upon scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education. Each local board of education shall adopt a policy and provide a mechanism to allow a parent or a guardian to withdraw his or her child from instruction required under this subdivision.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including HIV/AIDS, to the avoidance of out-of-wedlock pregnancy, or to the reproductive health and safety education curriculum. The review period shall extend for at least 60 days before use.

(6) Repealed by Session Laws 2009-213, s. 7, effective June 30, 2009, and applicable beginning with the 2010-2011 school year.

(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of

sexually transmitted diseases, including HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, or (ii) a reproductive health and safety education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.

(8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including HIV/AIDS, in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence. The Department of Health and Human Services shall provide the most current available information at the beginning of each school year.

(9) Contraceptives, including condoms and other devices, shall not be made available or distributed on school property.

(10) School health coordinators may be employed to assist in the instruction of any portion of the comprehensive school health education program. Where feasible, a school health coordinator should serve more than one local school administrative unit. Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education.

(11) Each local school administrative unit shall provide a comprehensive school health education program that meets all the requirements of this subsection and all the objectives established by the State Board. Each local board of education may expand on the subject areas to be included in the program and on the instructional objectives to be met.

(f) Establishment and Maintenance of Kindergartens. —

(1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in this subsection.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

(2) Any child who meets the requirements of G.S. 115C-364 shall be eligible for enrollment in kindergarten. Any child who is enrolled in

kindergarten and not withdrawn by the child's parent or guardian shall attend kindergarten.

(3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program.

(g) Civic Literacy. —

(1) Local boards of education shall require during the high school years the teaching of the nation's founding and related documents, which shall include at least the major principles in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(2) Local boards of education shall require that high school students demonstrate knowledge and understanding of the nation's founding and related documents in order to receive a certificate or diploma of graduation from high school.

(3) Local boards of education shall include among the requirements for graduation from high school a passing grade in all courses that include primary instruction in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(3a) Local boards of education shall allow and may encourage any public school teacher or administrator to read or post in a public school building, classroom, or event, excerpts or portions of writings, documents, and records that reflect the history of the United States, including, but not limited to, (i) the preamble to the North Carolina Constitution, (ii) the Declaration of Independence, (iii) the United States Constitution, (iv) the Mayflower Compact, (v) the national motto, (vi) the National Anthem, (vii) the Pledge of Allegiance, (viii) the writings, speeches, documents, and proclamations of the founding fathers and Presidents of the United States, (ix) decisions of the Supreme Court of the United States, and (x) acts of the Congress of the United States, including the published text of the Congressional Record. Local boards, superintendents, principals, and supervisors shall not allow content-based censorship of American history in the public schools of this State, including religious references in these writings, documents, and records. Local boards and professional school personnel may develop curricula and use materials that are limited to specified topics provided the curricula and materials are aligned with the standard course of study or are grade level appropriate.

(3b) A local school administrative unit may display on real property controlled by that local school administrative unit documents and objects of historical significance that have formed and influenced the United States legal or governmental system and that exemplify the development of the rule of law, such as the Magna Carta, the Mecklenburg Declaration, the Ten Commandments, the Justinian Code, and documents set out in subdivision (3a) of this subsection. This display may include, but shall not be limited to, documents that contain words associated with a religion; provided however, no display shall seek to establish or promote religion or to persuade any person to embrace a particular religion, denomination of a religion, or other philosophy. The display of a document containing words associated with a religion shall be in the same manner and appearance generally as other documents and objects displayed and shall not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects. The display also shall be accompanied by a prominent sign quoting the First Amendment of the United States Constitution as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

(4) The State Board of Education shall require that any high school level curriculum-based tests developed and administered statewide beginning with academic year 1990-91 include questions related to the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(5) The State Department of Public Instruction and the local boards of education, as appropriate, shall establish curriculum content and provide for teacher training to ensure that the intent and provisions of this subsection are carried out. The curriculum content established shall include a review of the contributions made by Americans of all races.

(g1) Modifications to the social studies curriculum to instruct students on participation in the democratic process and to give them hands-on experience in participating in the democratic process:

(1) The State Board of Education shall modify the high school social studies curriculum to include instruction in civic and citizenship education. The State Board of Education is strongly encouraged to include, at a minimum, the following components in the high school civic and citizenship education curriculum:
   a. That students write to a local, State, or federal elected official about an issue that is important to them;
   b. Instruction on the importance of voting and otherwise participating in the democratic process, including instruction on voter registration and preregistration;
   c. Information about current events and governmental structure; and
   d. Information about the democratic process and how laws are made.

(2) The State Board of Education shall modify the middle school social studies curriculum to include instruction in civic and citizenship education. The State Board of Education is strongly encouraged to include, at a minimum, the following components in the middle school civic and citizenship education curriculum:
   a. A tour of representative local government facilities such as the local jail, the courthouse, or a town hall, to help students understand the way their community is governed;
   b. That students choose and analyze a community problem and offer public policy recommendations on the problem to local officials; and
   c. Information about getting involved in community groups.

(g2) Student Councils. — All high schools and middle schools shall be encouraged to have elected student councils through which students have input into policies and decisions that affect them. All other schools are encouraged to have student councils.

The purpose of these student councils is to build civic skills and attitudes such as participation in elections, discussion and debate of issues, and collaborative decision making. Schools shall encourage active, broad-based participation in these student councils.

(g3) Current Events. — Schools should encourage discussions of current events in a wide range of classes, especially social studies and language arts classes. All high schools and middle schools are encouraged to have at least two classes per grade level to offer interactive current events discussions at least every four weeks.

(h) Character Education. — Each local board of education shall develop and implement character education instruction with input from the local community. The instruction shall be incorporated into the standard curriculum and should address the following traits:

(1) Courage. — Having the determination to do the right thing even when others don't and the strength to follow your conscience rather than the crowd; and attempting difficult things that are worthwhile.

(2) Good judgment. — Choosing worthy goals and setting proper priorities; thinking through the consequences of your actions; and basing decisions on practical wisdom and good sense.

(3) Integrity. — Having the inner strength to be truthful, trustworthy, and honest in all things; acting justly and honorably.

(4) Kindness. — Being considerate, courteous, helpful, and understanding of others; showing care, compassion, friendship, and generosity; and treating others as you would like to be treated.

(5) Perseverance. — Being persistent in the pursuit of worthy objectives in spite of difficulty, opposition, or discouragement; and exhibiting patience and having the fortitude to try again when confronted with delays, mistakes, or failures.

(6) Respect. — Showing high regard for authority, for other people, for self, for property, and for country; and understanding that all people have value as human beings.

(7) Responsibility. — Being dependable in carrying out obligations and duties; showing reliability and consistency in words and conduct; being accountable for your own actions; and being committed to active involvement in your community.

(8) Self-Discipline. — Demonstrating hard work and commitment to purpose; regulating yourself for improvement and restraining from inappropriate behaviors; being in proper control of your words, actions, impulses, and desires; choosing abstinence from premarital sex, drugs, alcohol, and other harmful substances and behaviors; and doing your best in all situations.

(h1) In addition to the instruction under subsection (h) of this section, local boards of education are encouraged to include instruction on the following responsibilities:

(1) Respect for school personnel. — In the school environment, respect includes holding teachers, school administrators, and all school personnel in high esteem and demonstrating in words and deeds that all school personnel deserve to be treated with courtesy and proper deference.

(2) Responsibility for school safety. Helping to create a harmonious school atmosphere that is free from threats, weapons, and violent or disruptive behavior; cultivate an orderly learning environment in which students and school personnel feel safe and secure; and encourage the resolution of conflicts and disagreements through peaceful means including peer mediation. Instruction in this responsibility should include a consistent and age-appropriate antiviolence message and a conflict resolution component for students in kindergarten through twelfth grade. These messages should include media-awareness education to help children recognize stereotypes and messages portraying violence.

(3) Service to others. — Engaging in meaningful service to their schools and their communities. Schools may teach service-learning by (i) incorporating it into their standard curriculum, or (ii) involving a classroom of students or some other group of students in one or more hands-on community-service projects. All schools are encouraged to provide opportunities for student involvement in community service or service-learning projects.

(4) Good citizenship. — Obeying the laws of the nation and this State; abiding by school rules; and understanding the rights and responsibilities of a member of a republic.

(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all students. Each student shall receive personal financial literacy instruction that shall include (i) the true cost of credit, (ii) choosing and managing a credit card, (iii) borrowing money for an automobile or other large purchase, (iv) home mortgages, (v) credit scoring and credit reports, and (vi) other relevant financial literacy issues.

The State Board of Education shall determine the other components of personal financial literacy that will be covered in the curriculum. The State Board shall also review the high school standard course of study to determine into which courses and grade levels the personal financial literacy curriculum shall be integrated.

(j) Disability History and Awareness. — Each local board of education shall provide instruction on disability, people with disabilities, and the disability rights movement in conjunction with Disability History and Awareness Month, established pursuant to G.S. 103-11. This instruction shall be incorporated into the standard curriculum through measures that include: (i) supplementing existing lesson plans, (ii) holding school assemblies, (iii) hosting disability-focused film festivals, or (iv) organizing other school activities. Local boards of education are encouraged to incorporate individuals with disabilities or knowledgeable guest speakers from the disability community into the delivery of this instruction. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1; 1983, c. 656, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 81; c. 1103, s. 2; 1985, c. 479, ss. 55(c)(1), 55(c)(2); 1987, c. 630; c. 738, ss. 186(a), 186(b), 187(a); 1989, c. 370; c. 801; 1989 (Reg. Sess., 1990), c. 1066, s. 100; 1991, c. 636, s. 9; c. 689, ss. 196(a), 198; c. 739, s. 11; 1991 (Reg. Sess., 1992), c. 769, s. 1; c. 900, s. 75.1(h); 1993, c. 180, s. 1; c. 321, s. 139(d); c. 359, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.5(a); 1995, c. 371, s. 1; c. 450, ss. 5, 6, 7; c. 507, s. 17.14; c. 509, ss. 61, 62; c. 534, ss. 1, 2, 3; 1995 (Reg. Sess., 1996), c. 716, s. 8.6; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(a), 18.24(a); 1997-18, s. 15(f); 1997-204, s. 2; 1997-273, ss. 1, 2; 1997-422, s. 1; 2001-363, ss. 1, 2(b), 2(d); 2003-284, s. 7.40(a), (b); 2005-155, s. 2; 2005-276, s. 7.59(a); 2006-69, s. 3(a); 2006-264, s. 54(a)-(c); 2007-274, s. 2; 2009-60, s. 1; 2009-213, ss. 2-9; 2009-236, s. 1; 2009-504, s. 1; 2009-541, s. 28(a).)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until the components of the Standard Course of Study have been fully incorporated and implemented as a part of the Basic Educational Program. The second version of subsection (c) set out above is effective when the components of the Standard Course of Study have been fully incorporated and implemented as a part of the Basic Educational Program. See Session Laws 1985, c. 479, s. 55(c)(2).

Cross References. — As to instruction in the prevention of forest fires, see G.S. 113-60. As to supplemental funding for low-wealth counties and small school systems, see the editor's notes under G.S. 115C-1.

Plan and Funding for a Virtual High School. — Session Laws 2005-276, ss. 7.41(a)-(e), provide: "(a) The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

"(b) As used in this section, 'E-learning' is electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

"(c) It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

"(d) The State Board of Education shall use funds appropriated for a virtual high school to establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year.

"The State Board of Education shall include in the pilot program instruction on personal financial literacy. This instruction shall be designed to equip students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances. The components of instruction shall include, at a minimum, consumer financial education, personal finance, and personal credit.

"(e) If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year."

NC Virtual Public School Program. — Session Laws 2009-451, s. 7.9(a)-(g), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

"The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

"The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"(e) The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

"(1) The General Fund appropriation for NCVPS;

"(2) Available American Recovery and Reinvestment Act of 2009 funds; and

"(3) Up to six million dollars ($6,000,000) from the School Technology appropriation.

"(f) NCVPS shall only provide high school courses.

"(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

"If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education."

For similar prior provisions, see Session Laws 2005-276, s. 7.41(a)-(e), Session Laws 2006-66, s. 7.16(a)-(e), and Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a).

Maternal and Child Health Block Grant. — Session Laws 2009-451, s. 10.78(gg) and (hh), provides: "(gg) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2009-2010 fiscal year, then those funds shall be transferred to the State Board of

Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

"The sum of three hundred ninety-one thousand six hundred forty-two dollars ($391,642) identified for expanded activities and salaries in the Department of Health and Human Services Block Grant Plan Management Plan for the 2009-2010 fiscal year funding request shall be used for current ongoing activities only.

"(hh) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program."

For prior similar provisions, see Session Laws 2002-126, s. 5.1(f), Session Laws 2004-124, s. 5.1(aa) and (bb), Session Laws 2005-276, s. 5.1(aa) and (bb), Session Laws 2007-323, s. 10.55(bb) and (cc) and Session Laws 2008-107, s. 10.17(dd) and (ee).

Task Force on Preventing Childhood Obesity. — Session Laws 2008-107, s. 10.17(cc), as amended by Session Laws 2008-118, s. 1.5(b), provides: "The sum of one hundred thousand dollars ($100,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Humans Services, Division of Public Health, for the 2008-2009 fiscal year shall be used to establish a Task Force on Preventing Childhood Obesity (Task Force) to be cochaired by the State Health Director and the Chairman of the State Board of Education. The Task Force is to review current State activities in the Department of Health and Human Services, the Department of Public Instruction, and the Health and Wellness Trust Fund and develop a comprehensive statewide strategic plan with recommendations for preventing childhood obesity. The goals of the strategic plan shall encompass the following framework of initiatives:

"(1) Providing healthier foods to students;

"(2) Improving the availability of healthy foods at home and in the community;

"(3) Increasing the frequency, intensity, and duration of physical activity in schools;

"(4) Encouraging communities to establish a master plan for pedestrian and bicycle pathways;

"(5) Improving access to safe places where children can play; and

"(6) Developing activities or programs that limit children's screen time, including limits on video games and television.

"Membership on the task force shall include, but is not limited to, representatives from the following organizations:

"(1) Health and Wellness Trust Fund.

"(2) North Carolina Institute for Public Health.

"(3) UNC Active Living by Design.

"(4) Blue Cross Blue Shield of North Carolina.

"(5) NC Hospital Association.

"(6) NC Parent Teacher Association.

"(7) American Heart Association.

"(8) School Nutrition Association of North Carolina.

"(9) Association of Local Health Directors.

"The Chairman of the State Board of Education and the State Health Director shall report to the House of Representatives Chairs of the Appropriations Subcommittees on Health and Human Services and Education, the Senate Chairs of the Appropriations Committees on Health and Human Services and Education/Public Instruction, the Joint Legislative Oversight Committee on Education, the Joint Legislative Oversight Committee on Health, and the Fiscal Research Division on the Task Force on Preventing Childhood Obesity's strategic plan and recommendations by January 15, 2009, or upon the convening of the 2009 Session of the General Assembly, whichever occurs first."

Legislative Task Force on Childhood Obesity. — Session Laws 2009-574, ss. 49.1-49.7, provide: "SECTION 49.1 There is created the Legislative Task Force on Childhood Obesity.

"SECTION 49.2. The Task Force shall consist of 12 members as follows:

"(1) Six members of the House of Representatives.

"(2) Six members of the Senate.

"SECTION 49.3. The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Task Force shall be filled by the same appointing authority that made the initial appointment. A quorum of the Task Force shall be a majority of its members.

"SECTION 49.4. The Task Force shall include, but should not be limited to, study of issues relating to childhood obesity. In the course of the study, the Task Force shall consider and recommend to the General Assembly strategies for addressing the problem of childhood obesity and encouraging healthy eating and increased physical activity among children through:

"(1) Early childhood intervention;

"(2) Childcare facilities;

"(3) Before and after-school programs;

"(4) Physical education and physical activity in schools;

"(5) Higher nutrition standards in schools;

"(6) Comprehensive nutrition education in schools;

"(7) Increased access to recreational activities for children;

"(8) Community initiatives and public awareness; and

"(9) Other means.

"SECTION 49.5. The Task Force shall encourage input from public nonprofit organizations, promoting healthy lifestyles for children, addressing the problems related to childhood obesity, encouraging healthy eating, and increasing physical activity among children.

"SECTION 49.6. Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Task Force, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Task Force may meet at anytime upon the joint call of the cochairs. The Task Force may meet in the Legislative Building or the Legislative Office Building.

"With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Task Force in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Task Force, and the expenses relating to the clerical employees shall be borne by the Task Force. The Task Force may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Task Force hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services."

"All State departments and agencies and local governments and their subdivisions shall furnish the Task Force with any information in their possession or available to them.

"SECTION 49.7. The Task Force shall submit a final report of the results of its study and its recommendations to the 2010 Regular Session of the 2009 General Assembly. The Task Force shall terminate on May 1, 2010, or upon the filing of its final report, whichever occurs first."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

Editor's Note. — Session Laws 1985, c. 479, s. 55(c)(8) and (c)(9), provided: "(8) Nothing in this subsection creates any rights except to the extent that funds are appropriated by the State and the units of local government to implement the provisions of this subsection and the Basic Education Program.

"(9) This subsection shall apply to all school years beginning with the 1985-86 school year."

Session Laws 1997-422, s. 2, provides that the State Board of Education shall adopt a policy by November 30, 1997, to ensure that the textbooks it adopts have no content-based censorship of American history, including religious references. The State Board may adopt textbooks that are limited to specified topics provided the textbooks are aligned with the standard course of study or are grade level appropriate.

Session Laws 1997-422, s. 3, provides that the State Board of Education shall provide a copy of that act to each local school superintendent in the State, and each local school superintendent shall ensure that school personnel within the unit are informed about the act.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2003-284. s. 7.40(d), provides: "This section is effective when it becomes law [June 30, 2003]. The rewrite of G.S. 115C-81(h1)(2) set out in subsection (b) of this section applies beginning with the 2004-2005 school year."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-276, s. 7.59(b), provides: "When developing the personal financial literacy curriculum, the State Board of Education shall consider the curriculum, materials, and guidelines developed for the pilot programs on financial literacy created by Section 7.35 of S.L. 2003-284. The State Board shall also consider the recommendations from any evaluations of the pilot programs."

Session Laws 2005-276, s. 7.59(c), provides: "The State Board of Education shall have up to two years to develop the personal financial literacy curriculum and integrate the curriculum into the standard course of study. The State Board shall report to the Joint Legislative Education Oversight Committee on the proposed curriculum before implementation."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

The preamble to Session Laws 2007-274, provides: "Whereas, the Americans with Disabilities Act of 1990 was founded on four principles: inclusion, full participation, economic self-sufficiency, and equality of opportunity for all people with disabilities; and

"Whereas, the United States Census Bureau reported in 2000 that there were 1,117,577 people with disabilities in the State of North Carolina out of a total population of 8,046,485; and

"Whereas, most families are likely to become affected by someone with some kind of disability; and

"Whereas, the National Center for Education Statistics reported that during the 2003-2004 school year, North Carolina served 193,956 students with disabilities under the Individuals with Disabilities Education Act; and

"Whereas, research has shown that students with disabilities encounter more difficulty fitting in with their peers, making friends, and becoming involved in school and community-based activities and clubs than their nondisabled peers; and

"Whereas, in order to ensure the full inclusion of people with disabilities into society, it is necessary to expand the public's knowledge, awareness, and understanding of the history of disabilities and the disability rights movement; and

"Whereas, October is recognized nationally as Disability Employment Awareness Month; and

"Whereas, designating Disability History and Awareness Month in North Carolina will increase public awareness and respect for people with disabilities who comprise a substantial percentage of North Carolina's population, teach future generations that people with disabilities have a rich history and have made valuable contributions throughout North Carolina and the United States, and ensure future generations understand that disability is a natural part of life and that people with disabilities have a right to be treated as individuals above all else; Now, therefore,"

Session Laws 2007-274, s. 3, provides: "The constituent institutions of The University of North Carolina are encouraged to conduct and promote activities that provide education, awareness, and understanding of disability history, people with disabilities, and the disability rights movement."

Session Laws 2007-274, s. 4, provides: "Nothing in this act shall require the General Assembly to appropriate funds to implement it or require a local school administrative unit to spend additional funds to implement it. The provisions of this act are not intended to create a burden, financial or otherwise for public schools, teachers, or State institutions of higher learning."

Session Laws 2007-277, s. 1(a)-(e), provides: "(a) The State Board of Education, in cooperation with The University of North Carolina Board of Governors and the State Board of Community Colleges, shall develop a framework for a Reaching One's Potential for Excellence (ROPE) Scholars Program. The purpose of the ROPE Scholars Pilot Program shall be (i) to strengthen middle grades education in order to provide students with the opportunity to graduate from high school with the core academic skills needed for postsecondary education and high-skilled employment, and (ii) thereby to reduce the high school dropout rate, increase high school and college graduation rates, and decrease the need for remediation in institutions of higher education.

"The framework for the ROPE Scholars Program shall require participating schools to have or be afforded access to high speed, broadband Internet resources and to use SAS EVAAS (Education Value Added Assessment System) or a comparable software system to track student academic progress over time.

"(b) It is the intent of the ROPE Scholars Program to:

"(1) Reduce class size to one teacher to every 17 students;

"(2) Provide annual salary incentives of up to five thousand dollars ($5,000) to teachers certified in any high-need subject matter area or to support personnel;

"(3) Provide a coordinator position at each participating school to assist in community and parental support;

"(4) Encourage students participating in the program, through agreements executed between the local school administrative unit and students and their parents or guardians, to:

"a. Maintain a ninety-five percent (95%) attendance rate each year;

"b. Achieve a minimum of a "B" average;

"c. Take the PSAT and the SAT or the ACT and achieve an adequate score, as determined by the State Board of Education;

"d. Meet the standards for admission established by the Board of Governors of The University of North Carolina;

"e. Engage in community service work each month during the school year for the number of hours determined by the State Board of Education; and

"f. Evidence good character by not engaging in unlawful conduct.

"(5) Provide students who successfully participate in the program with college scholarships.

"(c) The State Board of Education shall develop a competitive process through which local school administrative units may apply to participate in the pilot program. The State Board shall select three units from different geographic areas of the State, one of which shall be urban and one of which shall be rural. The Program shall be implemented beginning with the 2009-2010 school year.

"(d) The State Board of Education shall develop a process to evaluate the effectiveness of the Program.

"(e) The State Board of Education shall deliver a draft proposed framework to the Joint Legislative Education Oversight Committee by October 15, 2007, and a final proposal to the same committee by December 15, 2007. The report shall include the cost of implementing the pilot program and shall indicate the State laws, rules, and policies that would preclude the implementation of the pilot."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

This section was amended by Session Laws 2009-504, s. 1, in the coded bill drafting format provided by G.S. 120-20.1. In the second sentence of the second paragraph, the words "review the high school standard course of study to" were not struck through in the 2009 act. The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2009-60, s. 2, provides: "The Program Evaluation Division of the General Assembly shall study the cost and effectiveness of a statewide high school graduation project requirement. The Division shall report the results of its study to the Joint Legislative Education Oversight Committee on or before July 1, 2010."

Session Laws 2009-213, s. 1, provides: "This act shall be known as the 'Healthy Youth Act of 2009.'"

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-264, ss. 54(a)-(c), effective August 27, 2006, and applicable beginning with the 2007-2008 school year, in subdivision (e1)(1), substituted "HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS) virus infection" in sub-subdivision (e1)(1)k., and added the last paragraph; in subdivision (e1)(3), substituted "HIV/AIDS, that include emphasis" for "Acquired Immune Deficiency Syndrome (AIDS) virus infection, that includes emphasis" in the first sentence, inserted "when transmitted through sexual contact" following "sexually transmitted diseases," and substituted "HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior" for "Acquired Immune Deficiency Syndrome (AIDS)" in the second sentence, and deleted the former last sentence, which read "Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts."; in (e1)(4)d., substituted "when transmitted through sexual contact, including HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS)"; added the last sentence in subdivision (e1)(8); and substituted "HIV/AIDS" for "Acquired Immune Deficiency Syndrome (AIDS)" throughout.

Session Laws 2009-60, s. 1, effective June 5, 2009, added the last paragraph of subsection (b).

Session Laws 2009-213, ss. 2-9, effective June 30, 2009, and applicable beginning with the 2010-2011 school year, in subdivision (e1)(1)1., substituted "Reproductive health and safety education" for "Abstinence until marriage education"; deleted subdivision (e1)(3); rewrote subdivision (e1)(4); added subdivision (e1)(4a); in subdivision (e1)(5), substituted "reproductive health and safety education" for "abstinence until marriage"; deleted subdivision (e1)(6); in subdivision (e1)(7), substituted "or (ii) a reproductive health and safety" for "(ii) an abstinence until marriage program, or (iii) a comprehensive sex"; and added subdivision (e1)(11).

Session Laws 2009-236, s. 1, effective June 30, 2009, and applicable beginning with the 2010-2011 school year, rewrote subsection (b1).

Session Laws 2009-504, s. 1, effective August 26, 2009, and applicable beginning with the 2011-2012 school year, in subsection (i), deleted "during the high school years" at the end of the first sentence and added the second sentence in the first paragraph, and, in the second paragraph, inserted "other" in the first sentence and substituted "into which courses and grade levels the personal financial literacy curriculum shall be integrated" for "in which course the new personal financial literacy curriculum can be integrated" at the end of the second sentence.

Session Laws 2009-541, s. 28(a), effective January 1, 2010, added "including instruction on voter registration and preregistration" at the end of subdivision (g1)(1)b.

Legal Periodicals. — For comment, "The State and Sectarian Education: Regulation to Deregulation," see 1980 Duke L.J. 801.

For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

For 1997 legislative survey, see 20 Campbell L. Rev. 409.

For a note discussing the effect of Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), on equal school funding, see 33 Wake Forest L. Rev. 745 (1998)

For comment, "Written in Stone; Why Renewed Attempts to Post the Ten Commandments in Public Schools Will Likely Fail," see 81 N.C.L. Rev. 801 (2003).

CASE NOTES

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

OPINIONS OF ATTORNEY GENERAL

Scope of Regulation. — The section regulates instruction within the comprehensive school health education program whether conducted on or off campus but not after-school activities or unrelated instruction or materials such as those provided by a nurse engaged in providing medical assistance to a student. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Release to Attend Private School. — Local boards of education have the discretionary authority to release students from school for a part of the school day to attend a private school so long as the private school meets compulsory attendance requirements. A school board that elects to deny such permission does not violate the constitutional rights of parents or students. A board that elects to grant such permission should recognize, and should advise parents, that the absence from school may affect the student's academic progress. See opinion of Attorney General to Mr. W. Max Walser, Superintendent, Davidson County Schools, 57 N.C.A.G. 26 (1987.)

Provisions Applicable to Grades 10 through 12. — While the paragraphs of subsection (e1) of this section dealing with the "comprehensive school health education program" apply only to grades kindergarten through nine, there are other provisions in that subsection that would apply to all grades. For example, the duty which subdivision (e1)(3) imposes on the State Board to develop objectives for instruction in the prevention of sexually-transmitted diseases is not limited to the comprehensive school health program required in grades kindergarten through nine. Likewise, the obligation which subdivision (e1)(4) imposes on the State Board to maintain a list of recommended abstinence-until-marriage curricula and materials is not limited to any specific grades. Finally, subdivision (e1)(7) grants parents and guardians the right to review the objectives and materials associated with certain health related programs and withhold their consent to the children's participation in such programs irrespective of the ages or grades of their children. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Abstinence Education. — By the plain language of the statute, abstinence education is a required part of the comprehensive school health program which must be taught at all schools. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Comprehensive Sex Education Program. — The section does not limit the circumstances under which an LEA may initiate a comprehensive sex education program. An LEA may decide to offer a comprehensive sex education program whenever the local board of education deems it appropriate. That decision may be in response to a parent's request or a proposal from the superintendent or it may arise from the independent judgment of a member of the board. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

Yearly Public Hearings Not Required. — The provisions of subdivision (e1)(6) of this section do not require local boards of education to conduct public hearings every year before offering a "comprehensive sex education program." If the local board specifically decides to "adopt" such a program on a yearly basis, it must comply with the statute and hold the requisite hearing prior to each annual adoption. The statute, however, does not require the LEA to hold a public hearing on the comprehensive sex education program if the local board does not make changes in the objectives or materials in that program. See opinion of Attorney General to Richard L. Thompson, Deputy State Superintendent, Department of Public Instruction, 1997 N.C.A.G. 63 (11/3/97).

§ 115C-81.1. Basic Education Program Funds not to supplant Local funds for schools.

It is the intent of the General Assembly that budget funds appropriated by the General Assembly for vocational and technical education programs and clerical personnel to implement the Basic Education Program be used to supplement and not supplant existing State and local funding for the public schools. Therefore, to the extent that local school administrative units receive additional State funds for vocational and technical education programs and clerical personnel positions that were previously funded in whole or in part with nonstate funds, the local governments shall continue to spend for public school operating or capital purposes in the local school administrative units the amount of money they would have spent to provide the vocational and technical education programs and the school clerical personnel previously funded with nonstate funds.

Priority shall be given to funding capital needs, particularly those resulting from implementation of the Basic Education Program. (1987, c. 830, s. 88; 1993, c. 180, s. 2.)

§ 115C-81.2. Comprehensive plan for reading achievement.

(a) The State Board of Education shall develop a comprehensive plan to improve reading achievement in the public schools. The plan shall be fully integrated with State Board plans to improve student performance and promote local flexibility and efficiency. The plan shall be based on reading instructional practices for which there is strong evidence of effectiveness in existing empirical scientific research studies on reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents of students, and other interested parties. The plan shall, if appropriate, include revision of the standard course of study, revision of teacher certification standards, and revision of teacher education program standards.

(b) The State Board of Education shall critically evaluate and revise the standard course of study so as to provide school units with guidance in the implementation of balanced, integrated, and effective programs of reading instruction. The General Assembly believes that the first, essential step in the complex process of learning to read is the accurate pronunciation of written words and that phonics, which is the knowledge of relationships of the symbols of the written language and the sounds of the spoken language, is the most reliable approach to arriving at the accurate pronunciation of a printed word. Therefore, these programs shall include early and systematic phonics instruction. The State Board shall provide opportunities for teachers, parents, and other interested parties to participate in this evaluation and revision.

(c) In order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction, the State Board of Education, in collaboration with the Board of Governors of The University of North Carolina and with the North Carolina Association of Independent Colleges and Universities, shall review, evaluate, and revise current teacher certification standards and teacher education programs within the institutions of higher education that provide coursework in reading instruction.

(d) Local boards of education are encouraged to review and revise existing board policies, local curricula, and programs of professional development in order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction.

(e) Repealed by Session Laws 1997-18, s. 15(g), effective July 1, 1999. (1995 (Reg. Sess., 1996), c. 716, ss. 8.1, 8.2, 8.3, 8.4, 8.5(a); 1997-18, s. 15(g); 1997-456, s. 16.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 8.1, 8.2, 8.3, 8.4, and 8.5(a) were codified as this section at the direction of the Revisor of Statutes.

Session Laws 2002-178, s. 5(a), provides: "(a) The State Board of Education shall adopt a policy that requires kindergarten through eighth grade teachers to take three renewal credits in reading methods courses during each five-year license renewal cycle."

§ 115C-81.3. Instruction in American Sign Language.

(a) The State Board of Education shall encourage schools to offer American Sign Language classes in high schools as a modern foreign language.

(b) The State Board of Education shall adopt and implement standards for the certification of teachers of American Sign Language and shall set standards for teacher preparation programs that prepare students for certification as American Sign Language teachers. (2007-154, s. 1(a).)

Editor's Note. — Session Laws 2007-154, s. 4, made this section effective June 29, 2007.

The preamble to Session Laws 2007-154, provides: "Whereas, American Sign Language is a fully developed, autonomous, natural language with a unique grammar, syntax, vocabulary, and cultural heritage; and

"Whereas, the gestures, visual components, and structures of American Sign Language are neither derived from English nor a simplified version of English; and

"Whereas, American Sign Language is the predominant language most commonly used by the deaf community in the United States; and

"Whereas, there is increasing acceptance of American Sign Language as a foreign language taught in the public schools in the United States; and

"Whereas, 33 states currently have legislation recognizing American Sign Language as a foreign language; and

"Whereas, there is an increased acceptance of

American Sign Language as a foreign language among foreign language faculty at colleges and universities; Now, therefore,"

§ 115C-81.4. Science safety requirements.

(a) Prior to July 1, 2010, and annually thereafter, each local board of education shall certify to the State Board of Education that its high school and middle school science laboratories are equipped with appropriate personal protective equipment for students and teachers.

(b) Each local board of education shall ensure that its high schools and middle schools comply with all State Board of Education policies related to science laboratory safety. (2009-59, s. 1.)

Editor's Note. — Session Laws 2009-59, s. 4, made this section effective June 5, 2009.

§ 115C-82: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1086, s. 89(d).

§ 115C-83: Repealed by Session Laws 1997-18, s. 4.

Part 2. Calendar.

§ 115C-84: Repealed by Session Laws 1997-443, s. 8.38(a), effective July 1, 1998.

§ 115C-84.1: Repealed by Session Laws 1997-443, s. 1, effective July 1, 1998.

§ 115C-84.2. School calendar.

(a) School Calendar. — Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete

instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule one of these days at the beginning of the school year and one at the end of each academic quarter.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least seven days scheduled under subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

(b) Limitations. — The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 195 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veterans Day shall be a holiday for all public school personnel and for all students enrolled in the public schools.

(c) Emergency Conditions. — During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. — Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

(e) Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section. (1997-443, s. 8.38(c); 1998-212, s. 9.18(b); 1999-373, s. 1; 1999-463, Ex. Sess., s. 7A; 2003-8, s. 1; 2003-131, s. 1; 2004-180, s. 1; 2004-203, s. 44; 2006-264, s. 25.)

Temporary Amendment to Subdivision (a)(1) for Certain Local School Administrative Units Applicable to 2004-2005 School Year Only. — Session Laws 2005-48, ss. 1 and 2, provide that for the local school administrative units declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both, subdivision (a)(1) of this section reads as follows:

"A minimum of either 180 days or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

"If, due to inclement weather, a local board of education complies with this subdivision by scheduling 1,000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have a minimum of 180 days of instruction, teachers employed for a 10-month term are deemed to have been employed for 180 instructional days, and all other employees shall be compensated as if they had worked their regularly scheduled hours for 180 instructional days."

Editor's Note. — See ss. 7A(a) to (d) of Session Laws 1999-463, Extra Session.

The North Carolina counties that were declared a major disaster area as a result of Hurricane Floyd by the President of the United States are:

Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Tyrrell, Union, Vance, Wake, Warren, Washington, Wayne, and Wilson.

Session Laws 1999-463, enacted at the 1999 Extra Session held on December 15 and 16, 1999, provides in s. 1 that the act shall be known as the Hurricane Floyd Recovery Act of 1999.

Session Laws 2005-48, s. 3, provides that this temporary amendment is applicable to the 2004-2005 school year only.

Session Laws 2003-8, s. 2, made the addition of subdivision (a)(1a) by Session Laws 2003-8, s. 1, applicable only to the 2002-2003 school year.

Session Laws 2004-180, s. 3, provides: "For certified and noncertified employees employed on or after the effective date of this act, the annual rate of pay beginning with the 2005-2006 school year shall not be reduced as the result of this act. Furthermore, nothing in this act shall be construed to change the pay cycle for noncertified employees. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on local compliance with this section."

Session Laws 2004-180, s. 5, provides: "Nothing in this act shall require the General Assembly to appropriate funds to implement it or require a local school administrative unit to spend additional funds to implement it."

Session Laws 2004-203, s. 44, effective August 17, 2004, deleted the last paragraph of subsection (d) which read: "Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days." However, there was no such paragraph in subsection (d), and the apparent intent was to delete the former last paragraph in subsection (a). Session Laws 2006-264, s. 25, repealed Session Laws 2004-203, s. 44, effective August 27, 2006.

The North Carolina counties that were declared a major disaster area as a result of Hurricanes Frances or Ivan, or both are:

Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga and Yancey.

Session Laws 2009-451, s. 7.40, provides: "The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

"Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2009-2010 calendar year for the Wilkes County Schools shall include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months. Notwithstanding G.S. 115C-84.2(d), the opening date for students shall not be before August 24.

"If the Wilkes County Board of Education adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 180 days of instruction and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2010, on the administration of the pilot program, cost-savings realized by it, and its impact on student achievement."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Authority to Create and Operate Year Round Schools. — Board of Education had the authority under G.S. 115C-84.2(a) to create and operate year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

County board of education can assign students to year-round schools without parental consent because there are no statutory restrictions or legislative disapproval of the use of year-round school calendars in G.S. 115C-84.2 when G.S. 115C-84.2 specifically recognizes year-round schools as a legitimate calendar option; G.S. 115C-84.2(a) encourages local school boards to utilize calendar flexibility, and when assignment to a particular school places too great a burden on individual children parents may seek reassignment and judicial review of any assignment decision. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

Exemption of Year Round Schools from Teacher's Summer Vacation Requirement. — G.S. 115C-84.2(b)(2) specifically exempts year-round schools from the statute's apparent protection of a teacher's summer vacation. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App.

LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Minimum Quantum of Education Required. — G.S. 115C-1, consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. How that minimum quantum of instruction is translated into an annual school calendar is then prescribed by G.S. 115C-84.2(a)(1), (b)(2), which sets out certain requirements, but otherwise mandates that the local board shall designate when the 180 instructional days shall occur and specifically recognizes year-round schools as a permissible calendaring scheme. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

No Private Cause of Action. — Trial court properly dismissed the teachers' request for declaratory relief against the county school board under G.S. 115C-84.2 and G.S. 115C-301.1 because the teachers failed to plead all the facts necessary to disclose the existence of an actual controversy between the parties; furthermore, neither section expressly or implicitly created a private cause of action for the teachers. Lea v. Grier, 156 N.C. App. 503, 577 S.E.2d 411, 2003 N.C. App. LEXIS 238 (2003).

Construction with G.S. 115C-1. — G.S. 115C-1, especially as a codification of N.C. Const., Art. IX, § 5, can be read as setting a floor for the quantum of education required. Any other construction of the statute would place G.S. 115C-1 in conflict with G.S. 115C-84.2(a)(1)'s requirement that a school calendar include a minimum of 180 days and 1,000 hours of instruction covering at least 9 calendar months. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Year Round Schools are not Outside the Calendar Programs. — Since the provision in G.S. 115C-84.2(d) referencing "year-round schools" governs calendars permitted under the statute, "year-round schools" necessarily do not constitute programs "outside the calendar" permitted by the statute. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Year Round Schools. — Both the "traditional" calendar schools and "year-round" calendar schools options comply with the requirements set out in G.S. 115C-84.2(a) and (b). Thus, a Board of Education had authority under these statutes to operate year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Express language of G.S. 115C-84.2 exempting year-round schools from the calendar-design restrictions demonstrates that the General Assembly recognized a year-round calendar as a valid alternative to the traditional calendar (which includes a significant summer vacation). Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Board of Education May Establish Year Round Schools. — G.S. 115C-47(11) authorized a board of education to determine the school calendar under G.S. 115C-84.2, which did not bar year-round schools. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

OPINIONS OF ATTORNEY GENERAL

"Modified calendar" as used in G.S. 115C-84.2(d) means a school calendar that is changed or altered from the standard or regular school calendar. See opinion of Attorney General to Mr. Earl Watson, Executive Director, Southwest Education Alliance, 2005 N.C. AG LEXIS 2 (4/14/05).

Determination of School and Work Hours. — Section 115C-47(11) and former G.S. 115C-84(a)(see now this section) give local boards of education authority over the length of the school day for students, but do not give local boards authority to establish the length of the work day for State funded employees. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

A single, uniform school calendar must be adopted by local boards of education, beginning with the 2005-2006 school year, for students for all schools in the administrative area that do not qualify for one or more of the statutory exceptions. See opinion of Attorney General to Mr. Earl Watson, Executive Director, Southwest Education Alliance, 2005 N.C. AG LEXIS 2 (4/14/05).

The pay for all 10 month school employees, both certified and noncertified, is intended to be the same for 215 days of work, holidays and leave in 2005-06 that they earned for 220 days of work, holidays and leave in 2004-05. See opinion of Attorney General to Mr. Earl Watson, Executive Director, Southwest Education Alliance, 2005 N.C. AG LEXIS 2 (4/14/05).

Part 3. Textbooks.

§ 115C-85. Textbook needs are determined by course of study.

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks.

As used in this part, "textbook" means systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.

Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the State except as provided in G.S. 115C-98(b1). (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 20; 1995 (Reg. Sess., 1996), c. 716, s. 18.)

Legal Periodicals. — For comment, "The State and Sectarian Education: Regulation to Deregulation," see 1980 Duke L.J. 801.

§ 115C-86. State Board of Education to select and adopt textbooks.

The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-87. Appointment of Textbook Commission.

Shortly after assuming office, the Governor shall appoint a Textbook Commission of 23 members who shall hold office for four years, or until their successors are appointed and qualified. The members of the Commission shall be appointed by the Governor upon recommendation of the Superintendent. Five of these members shall be teachers or principals in grades K-5; five shall be teachers or principals in grades 6-8; four shall be superintendents, teachers, or principals in grades 9-12; one shall be a superintendent of a local school administrative unit, three shall be parents of students in grades K-5 at the time of appointment; three shall be parents of students in grades 6-8 at the time of appointment; and two shall be parents of students in grades 9-12 at the time of appointment. The Governor shall fill all vacancies by appointment for the unexpired term. The Commission shall elect a chairman, subject to the approval of the Superintendent. The Commission shall meet four times a year or at the call of the chair. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance of their duties at the rates specified in G.S. 138-5(a). Compensation shall be paid from funds available to the State Board of Education. (1955, c.

1372, art. 24, s. 3; 1969, c. 519, s. 1; 1977, c. 1113; 1981, c. 423, s. 1; 1999-237, s. 8.30(a).)

§ 115C-88. Commission to evaluate textbooks offered for adoption.

(a) The Commission shall evaluate all textbooks offered for adoption.

Each proposed textbook shall be read by at least one expert certified in the discipline for which the textbook would be used. The Commission may use external experts if no Commission member or advisory committee member qualifies as an expert certified in a particular discipline.

The Commission may consider any review of a proposed textbook by other experts certified in the discipline who are not involved in the textbook adoption process. However, these reviews may not substitute for the direct examination of the proposed textbook by a Commission member, an advisory committee member, or any other expert retained by the Commission.

(b) Each member shall examine carefully and file a written evaluation of each proposed textbook for which the member is responsible.

The evaluation report shall give special consideration to the suitability of the textbook to the instructional level for which it is offered, the content or subject matter, whether the textbook is aligned with the Standard Course of Study, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 3(a); 1999-237, s. 8.30(b).)

§ 115C-89. Selection of textbooks by Board.

At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall request sealed bids from the publishers on all the books being considered.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1989, c. 798.)

§ 115C-90. Adoption of textbooks and contracts with publishers.

The publishers' sealed bids shall be opened in the presence of two persons designated by the State Board of Education and one person designated by the Superintendent of Public Instruction. The Board may then adopt the books required by the courses of study and enter into contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board.

All textbook contracts shall include a clause granting to the State Board of Education the license to produce Braille, large print, and audio-cassette tape copies of the textbooks for use in the State public schools. Also, the General Assembly urges the State Board of Education to request such a license from textbook publishers with whom a contract was entered into prior to August 1, 1987. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1983, c. 549, s. 1; 1987, c. 738, s. 190; 1987 (Reg. Sess., 1988), c. 1025, s. 10.)

§ 115C-91. Continuance and discontinuance of contracts with publishers.

When an existing or future contract expires, the Board may, with the publisher's approval, continue the contract for any particular book or books for a period not less than one or more than five years. If a publisher desires to terminate a contract that has been extended beyond the original contract period, he shall give notice to the Board 90 days prior to May 1. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-92. Procedure for change of textbook.

The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give the publisher 90 days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-93. Advice from and suits by Attorney General.

The form and legality of contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General.

When requested by the Board, the Attorney General shall bring suit against any publisher who fails to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract. The suit shall be brought for an amount sufficient to enforce the contract or to compensate the State for any loss sustained by the publisher's failure to keep his contract. (1955, c. 1372, art. 24, s. 8; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-94. Publishers to register.

Any publisher who submits books for adoption shall register in the office of the Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-95. Sale of books at lower price reduces price to State.

Every contract made by the Board with the publisher of any school textbook on the State-adopted list shall be deemed to have written therein a condition providing that if that publisher, during the life of his contract with this State, contracts with any other governmental unit or places that textbook on sale anywhere in the United States for a price less than that stipulated in his contract with the State of North Carolina, the publisher shall immediately furnish that textbook to this State at a price not greater than that for which the book is furnished, sold, or placed on sale anywhere else in the nation. (1955, c. 1372, art. 24, s. 10; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-96. Powers and duties of the State Board of Education in regard to textbooks.

The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. To implement this directive, the State Board of Education shall evaluate annually the amount of money necessary to provide textbooks based on the actual cost and availability of textbooks and shall request sufficient appropriations from the General Assembly.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

(1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State public school system and to carry out the provisions of this Part.

(2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than those operated by the State Board of Education.

(3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 81(a).)

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

CASE NOTES

Construction with G.S. 115C-238.29H. — Although, for accounting purposes, the value of textbooks was shown in the annual report of the local current expense fund of a local board of education, because textbooks were loaned to the local board, the local board could not convert that value to its own purposes; thus, the value of the textbooks did not constitute moneys in the local current expense fund that had to be shared with a group of charter schools pursuant to G.S. 115C-238.29H(b). Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

§ 115C-97. State Board of Education authorized to discontinue handling supplementary and library books.

The State Board of Education may discontinue the adoption of supplementary textbooks and, at the expiration of existing contracts, may discontinue the purchase, warehousing, and distribution of supplementary textbooks. The Board may also discontinue the purchase and resale of library books. Funds appropriated to the State Board of Education for supplementary textbooks shall be transferred to the State Public School Fund for allotment to each local school administrative unit, based on its average daily membership, for the purchase of supplementary textbooks, library books, periodicals, and other instructional materials. (1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-98. Local boards of education to provide for local operation of the textbook program, the selection and procurement of other instructional materials, and the use of nonadopted textbooks.

(a) Local boards of education shall adopt rules not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audiovisual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(b1) A local board of education may establish a community media advisory committee to investigate and evaluate challenges from parents, teachers, and members of the public to textbooks and supplementary instructional materials on the grounds that they are educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of the students. The State Board of Education shall review its rules and policies concerning these challenges and shall establish guidelines to be followed by community media advisory committees.

The local board, at all times, has sole authority and discretion to determine whether a challenge has merit and whether challenged material should be retained or removed.

(b2) Local boards of education may:

(1) Select, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and courses; and

(2) Approve school improvement plans developed under G.S. 115C-105.27 that include provisions for using textbooks that have not been adopted by the State Board of Education for selected grade levels and courses.

All textbook contracts made under this subsection shall include a clause granting to the local board of education the license to produce braille, large print, and audiocassette tape copies of the textbooks for use in the local school administrative unit.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the local school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1; 1981, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1074, s. 23(a); 1995 (Reg. Sess., 1996), c. 716, ss. 8.7, 19.)

Editor's Note. — The subsection designation (b2) was added at the direction of the Revisor of Statutes, the designation in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 19, having been (b1).

Legal Periodicals. — For note, "State v. Whittle Communications: Allowing Local School Boards To Turn On 'Channel One'," see 70 N.C.L. Rev. 1929 (1992).

CASE NOTES

Purpose of 1990 Amendments. — Through the 1990 amendments to this section and G.S. 115C-47, the General Assembly made clear what the statutes already provided — that decisions concerning the procurement of supplementary instructional materials, including those which involve commercial advertising, are to be made exclusively by the local school boards without having to seek approval of the State Board. State v. Whittle Communications, 328 N.C. 456, 402 S.E.2d 556 (1991).

"Supplementary Instructional Material." — Since a short video news program designed to keep students informed on current affairs was a supplementary instructional material, the State Board of Education acted in excess of its authority in enacting a temporary rule to prohibit local school boards from contracting for such programs. State v. Whittle Communications, 328 N.C. 456, 402 S.E.2d 556 (1991).

§ 115C-99. Legal custodians of textbooks furnished by State.

Local boards of education are the custodians of all textbooks purchased by the local boards with State funds. They shall provide adequate and safe storage facilities for the proper care of these textbooks and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 3(b).)

CASE NOTES

Cited in Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

§ 115C-100. Rental fees for textbooks prohibited; damage fees authorized.

No local board of education may charge any pupil a rental fee for the use of textbooks. A pupil's parents or legal guardians may be charged damage fees for abuse or loss of textbooks under rules adopted by the State Board of Education. All money collected from the sale of textbooks purchased with State funds under the provisions of this Part shall be paid annually as collected to the State Board of Education. (1969, c. 519, s. 1; 1981, c. 423, s. 1; 1983, c. 549, s. 2; 1985, c. 581, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 3(c).)

CASE NOTES

Construction with G.S. 115C-238.29H. — Although, for accounting purposes, the value of textbooks was shown in the annual report of the local current expense fund of a local board of education, because textbooks were loaned to the local board, the local board could not convert that value to its own purposes; thus, the value of the textbooks did not constitute moneys in the local current expense fund that had to be shared with a group of charter schools pursuant to G.S. 115C-238.29H(b). Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

§ 115C-101. Duties and authority of superintendents of local school administrative units.

The superintendent of each local school administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this Part and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each local school administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and moneys may be accounted for properly. If any principal or teacher fails to comply with the provisions of this section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-102. Right to purchase; disposal of textbooks and materials.

(a) Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the public schools of the State from the board of education of the local school administrative unit in which the child is enrolled or, in the case of basic textbooks, from the State Board of Education.

(b) Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other provision of law, the State Board of Education may adopt rules authorizing local boards of education to dispose of discontinued instructional material, including State-adopted textbooks. (1955, c. 1372, art. 25, s. 2; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1991, c. 328, s. 1.)

§§ 115C-102.1 through 115C-102.4: Reserved for future codification purposes.

Part 3A. School Technology.

§ 115C-102.5. Commission on School Technology created; membership.

(a) There is created the Commission on School Technology. The Commission shall be located administratively in the Department of Public Instruction.

The purpose of the Commission shall be to advise the State Board of Education on the development of a State School Technology Plan that (i) ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century and (ii) ensures equity and access to school technology for all segments of the public school population in North Carolina.

The Commission shall meet at least twice each fiscal year and shall provide input and feedback on the State School Technology Plan prior to approval.

(b) The Commission shall consist of the following members:

(1) The State Superintendent of Public Instruction or a designee;
(2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
(3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
(4) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.
(5) Two members appointed by the Governor;
(6) Two members appointed by the President Pro Tempore of the Senate;

(7) Two members appointed by the Speaker of the House of Representatives; and

(8) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

(9) The State Chief Information Officer, or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(c) Repealed by Session Laws 1997-443, s. 8.26(a).

(d) Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances set forth in G.S. 138-5.

(d1) The Chair of the State Board of Education shall select the Commission member or members who shall serve as chair or cochairs of the Commission.

(e) The Department of Public Instruction shall provide requested professional and clerical staff to the Commission. (1993, c. 321, s. 135(a); c. 522, s. 20; 1993 (Reg. Sess., 1994), c. 591, s. 11(a); 1997-148, s. 7; 1997-443, s. 8.26(a); 1998-131, s. 7; 1998-220, s. 1; 2004-199, s. 4; 2009-451, s. 7.31.)

Editor's Note. — Session Laws 1998-131, s. 19, made amendments to this section effective July 1, 1998 only if funds were appropriated for the 1998-99 fiscal year to implement this act. The necessary appropriation was made.

Session Laws 2007-323, s. 7.39(a), (b), provides: "(a) Funds are appropriated in this act to the State Board of Education to be used with a grant of three million dollars ($3,000,000) from the Golden LEAF Foundation and other private sector funds to establish a school technology pilot program. Eight pilot high schools selected by the Golden LEAF Foundation and the Department of Public Instruction shall receive funds to incorporate technology in the classroom. Non-State monies shall fund student and teacher portable computers. The State Board of Education shall report to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division on the results of this pilot program by March 15, 2009. Up to one hundred thousand dollars ($100,000) may be used to contract with an independent research organization to study the effectiveness of this pilot program on student achievement, to complete a cost-benefit analysis, to make recommendations for improvements in the program, and to make recommendations regarding the possible continuance or expansion of the program. The remaining State funds shall be used to:

"(1) Assess the network capabilities and connectivity needs at each of the eight pilot sites;

"(2) Purchase the additional software, hardware, and other equipment necessary to support this program;

"(3) Allow each pilot site to use a maximum of one hundred thirty thousand dollars ($130,000) to establish up to two positions to provide on-site instructional and technical support on a contract basis; and

"(4) Provide ongoing professional development to teachers and principals in the pilot schools.

"(b) Unused funds at the end of the 2007-2008 fiscal year for this program shall not revert."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, in subsection (a), in the first paragraph, deleted "but shall exercise all its prescribed statutory powers independently of the Department of Public Instruction" from the end of the second sentence, and added the second and third paragraphs; deleted subdivision (b)(4), which read: "A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce"; in subdivision (b)(5), substituted "Two members" for "Four members"; rewrote subdivisions (b)(6) and (b)(7); deleted subdivision (b)(8), which read: "The Secretary of Health and Human Services or a designee"; added subdivision (b)(9); added subsection (d1); in subsection (e), in the first sentence, substituted "Public Instruction shall" for "Public Instruction, the Department of Community Colleges, and the Office of Information Technology Services shall," and deleted the former last two sentences, which read: "The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work. The Commission shall use an outside consultant to perform a requirements analysis for learning and instructional management technologies on a statewide basis that is based on information gathered from each local school administrative unit and that considers the needs of teachers, students, and administrators."

§ 115C-102.6. Duty to propose a State school technology plan.

The State Board of Education shall propose a State school technology plan that ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. The Commission on School Technology will advise the State Board of Education on the State School Technology Plan and its components. (1993, c. 321, s. 135(a); 1993 (Reg. Sess., 1994), c. 769, s. 19.26(a); 2009-451, s. 7.31.)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, rewrote the section.

§ 115C-102.6A. Elements of the State school technology plan.

(a) The State school technology plan shall be a comprehensive State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance in the public schools through the use of learning and instructional management technologies. The purpose of the plan shall be to provide a cost-effective foundation of flexible technology and infrastructure to promote substantial gains in student achievement.

(b) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

(c) Components of the State school technology plan shall include at least the following:

(1) Common technical standards and uniform practices and procedures that provide statewide economies of scale in procurements, training, support, planning, and operations.

(2) Conceptual technical architecture that includes:

a. Principles — Statements of direction, goals, and concepts to guide the development of technical architecture;

b. Standards for interoperability — Detailed specifications to ensure hardware, software, databases, and other products that may have been developed independently or purchased from different vendors or manufacturers will work together, to the extent that interoperability facilitates meeting instructional or administrative goals; and

c. Implementation strategies — Approaches or guidelines for developing and installing the components of the technical infrastructure.

(3) A quality assurance policy for all school technology projects, training programs, systems documentation, and maintenance plans.

(4) Policies and procedures for the fair and competitive procurement of school technology that provide local school administrative units with a vendor-neutral operating environment in which different school technology hardware, software, and networks operate together easily and reliably, to the extent feasible consistent with meeting instructional or administrative goals. The operating environment includes all hardware and software components and configurations necessary to accomplish the integrated functions for school technology such as (i) types and sizes of computer platforms, telecommunications equipment, and associated communications protocols; (ii) operating systems for the computer processors; (iii) applications and other operating and support software; and (iv) other equipment, items, and software, such as printers, terminals, data and image storage devices, and other input, output, and storage devices.

(5) A comprehensive policy for inventory control.

(6) Parameters for continuous, ongoing training for all personnel involved in the use of school technology. Training shall focus on the integration of technology and instruction and on the use of particular applications.

(7) Recommendations to the State Board of Education of requirements for preservice teacher training on the integration of teaching and school technology.

(8) Proposals for leadership training on the use of school technology to improve instruction and as a management tool.

(9) Development of expertise at the State and regional levels on school technology.

(10) Flexibility to enable local school administrative units and individual schools to meet individual school unit and building needs.

(11) Flexibility to meet the needs of all students, allow support to students with a wide range of abilities, and ensure access to challenging curricula and instruction for children at risk of school failure.

(12) Use of technologies to support challenging State, federal, and local educational performance goals.

(13) Effective and integrated use of technologies compatible with (i) the standard course of study, (ii) the State assessment program, and (iii) related student data management.

(14) Use of technologies as a communication, instructional, and management tool and for problem-solving, exploration, and advanced skills.

(15) Proposals for addressing equipment needs for State curricula areas.

(16) Specifications for minimum components of local school system technology plans.

(17) A baseline template for:

a. Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and

b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 2005-276, s. 7.43(a); 2009-451, s. 7.31.)

Editor's Note. — The subsection designations (b) and (c) were assigned by the Revisor of Statutes, the subsection designations in Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 19.26(a) having been (a1) and (b).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, in subsection (a), in the first sentence, substituted "comprehensive" for "long-term," and in the second sentence, substituted "technology and infrastructure" for "and long-lasting technology"; deleted subsection (b), which read: "In developing the plan the Commission shall consider and plan for the relationship of the North Carolina Information Highway to the plan. In particular the plan shall establish priorities for the acquisition of school technologies including how the Information Highway fits into those priorities."; in subdivision (c)(12), inserted "federal"; and in subdivision (c)(15), substituted "State curricula areas" for "vocational education, Tech Prep, and science instruction."

§ 115C-102.6B. Approval of State school technology plan.

(a) The State Board of Education shall review, revise as needed, and approve the State School Technology Plan at a minimum every two years in the odd-numbered year, beginning in 2011. The plan shall be updated more often, as required, as in cases where significant changes occur related to Board goals, curriculum standards, and available technology.

(b) The Board shall submit the plan to the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4). At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.

G.S. 115C-102.6A(c)(1) through (17)

The Board shall report annually by February 1 of each year to the Joint Legislative Education Oversight Committee on the status of the State School Technology Plan.

(c) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 1997-443, s. 8.26(b); 2004-129, s. 29; 2009-451, s. 7.31; 2009-570, s. 37.)

Editor's Note. — Subsection (b) was amended by Session Laws 2009-451, s. 7.31 and 2009-571, s. 37, without taking into account amendments by the other act. Session Laws 2009-570 inserted "G.S. 115C-102.6A(c)(1) through (17)" into language in the first paragraph that was deleted by Session Laws 2009-451, s. 7.31. Subsection (b) has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, rewrote the section.

Session Laws 2009-570, s. 37, effective August 28, 2009, substituted "G.S. 115C-102.6A(c)(1) through (17)" for "G.S. 115C-103.6A(1) through (16)" at the end of the first paragraph of subsection (b).

§ 115C-102.6C. Approval of local school system technology plans.

(a) Each local board of education shall develop a local school system technology plan that is aligned with and meets the requirements of the State school technology plan. In developing a local school system technology plan, a local board of education is encouraged to incorporate this plan into its strategic planning and to bring together stakeholders from various areas of the local school administrative unit, including curriculum leaders, teachers, administrators, representatives from technology services and instructional technology, and finance, as well as other departments of the unit as required. In addition, the local board is encouraged to coordinate its planning with other agencies of State and local government, including other local school administrative units.

The Department of Public Instruction shall assist the local boards of education in developing the instructional and technological aspects of the plan.

Each local board of education shall submit the local plan it develops to the Department of Public Instruction for evaluation of the parts of the technological and instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Department of Public Instruction, shall approve all local plans that comply with the requirements of the State school technology plan.

(b) After a local school system technology plan is approved by the State Board of Education, all State funds spent by the local board of education for any aspect of school technology shall be used to implement the local school system technology plan.

(c) State School Technology Fund dollars that are allocated to the local school administrative unit to implement the plan shall not be expended until the plan has been approved by the State Board of Education. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 2004-129, s. 30; 2009-451, s. 7.31.)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, in subsection (a), in the first paragraph, inserted "is aligned with and" in the first sentence, and in the second sentence, added the language beginning "incorporate this plan" and ending with "is encouraged to"; in the second paragraph, deleted the former first sentence, which read: "The Office of Information Technology Services shall assist the local boards of education in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so"; in the third paragraph, in the first sentence, substituted "the Department of Public Instruction for evaluation of the parts of the technological and" for "the Office of Information Technology Services for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the," and in the second sentence, deleted "Office of Information Technology Services and the" preceding "Department of Public Instruction"; and in subsection (c), deleted "After a local school system technology plan is approved by the State Board of Education, the local board of education may use funds in the" from the beginning, inserted "dollars" near the middle, and added "shall not be expended until the plan has been approved by the State Board of Education" at the end.

§ 115C-102.6D. Establishment of the State School Technology Fund; allocation and use of funds.

(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates.

(b) Funds in the State School Technology Fund shall be allocated to local school administrative units as directed by the General Assembly. Funds allocated to each local school administrative unit shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(c) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

(d) No local school administrative unit may access technology-related funds until the State Board of Education has approved its school technology plan. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 1997-484, s. 7; 2009-451, s. 7.31.)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, deleted subsection (c), which read: "Each local school administrative unit with a local school system technology plan approved by the State Board of Education may use funds allocated to it to implement its local plan or as otherwise specified by the General Assembly." and added subsection (d).

§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.

(a) The Department of Public Instruction shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

(b) Repealed by Session Laws 2009-451, s. 7.31, effective July 1, 2009.

(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans. (1993, c. 321, s. 135(a); 1993 (Reg. Sess., 1994), c. 769, s. 19.26(c); 1997-18, s. 15(k); 2004-129, s. 31; 2005-276, s. 7.43(c); 2009-451, s. 7.31.)

Editor's Note. — Session Laws 2005-276, 7.43(f), provides: "In order to provide assistance to local school administrative units with E-rate applications, the Department of Public Instruction shall, within existing funds, ensure that a minimum of one full-time coordinator is assigned this responsibility. The Department shall notify local school administrative units about the person or office assigned the responsibility of providing assistance with E-rate applications.

"The Department shall provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by local school administrative units.

"As used in this section, 'E-rate' is the mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.31, effective July 1, 2009, in subsection (a), substituted "Department of Public Instruction" for "Commission" in the first sentence; deleted subsection (b), which read: "The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the Office of Information Technology Services."; and in subsection (c), deleted "and the State Chief Information Officer" preceding "on which" in the second sentence.

§ 115C-102.8: Repealed by Session Laws 1997-18, s. 5.

Part 3B. Technology Alliance.

§ 115C-102.15: Repealed by Session Laws 2009-451, s. 7.15(a), effective July 1, 2009.

Editor's Note. — Former G.S. 115C-102.15, which created the Business and Education Technology Alliance, was enacted by Session Laws 2002-126, s. 7.27(a)-(f), and amended by Session Laws 2004-129, s. 32.

This section was also amended by Session Laws 2009-570, ss. 8(c) and 8(d), effective August 28, 2009, which substituted "North Carolina Chamber" for "North Carolina Citizens for Business and Industry" in subdivisions (b)(9) and (b)(15); and made a minor stylistic change. The amendment never took effect.

Session Laws 2009-451, s. 7.15(b), provides: "The State Controller shall transfer the fund balance from the Business Education Technology Alliance Fund to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Part 4. Fees.

§ 115C-103. Fees.

Fees, charges and costs may be collected from students, their parents or guardians, and school personnel in accordance with the provisions of G.S. 115C-47(6). (1981, c. 423, s. 1; 1985, c. 581, s. 2.)

Part 5. Interstate Compact on Education.

§ 115C-104. Enactment of Compact.

The Compact for Education is hereby entered into and enacted into law, with all jurisdictions legally joining therein. Pursuant to Article III(9) of the Compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. The form of the Compact is substantially as follows:

COMPACT FOR EDUCATION.

Article I. Policy and Purpose.

It is the purpose of this Compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.

(5) It is the policy of this Compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

(6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state which are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this Compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed 10 nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the

power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(10).

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(7) The commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the Compact, the commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this Compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this Compact.

Article V. Cooperation with Federal Government.

(1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representatives shall have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this Compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

(2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to

advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

(3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

(3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(7) of this Compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III(7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties' Entry into and Withdrawal.

(1) This Compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this Compact, shall mean the closest equivalent official of such jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this Compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

(3) Adoption of the Compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his

state a party only until December 31, 1967. During any period when a state is participating in this Compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

(4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020; 1981, c. 423, s. 1; 1991, c. 369, s. 1.)

§ 115C-105: Repealed by Session Laws 1991, c. 369, s. 2.

ARTICLE 8A.

North Carolina Education Standards and Accountability Commission.

§§ 115C-105.1 through 115C-105.10: Repealed by Session Laws 1997-443, s. 8.27(c).

§§ 115C-105.11 through 115C-105.19: Reserved for future codification purposes.

ARTICLE 8B.

School-Based Management and Accountability Program.

Part 1. Implementation of Program.

§ 115C-105.20. School-Based Management and Accountability Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to improve student performance.

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to:

(1) Assist local boards and schools in the development and implementation of school-based management under Part 2 of this Article.

(2) Recognize the schools that meet or exceed their goals.

(3) Identify low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37. The assistance teams should consist of currently practicing teachers and staff, representatives of institutions of higher education, school administrators, and others the State Board considers appropriate.

(4) Enable assistance teams to make appropriate recommendations under G.S. 115C-105.38.

(5) Establish a process to resolve disputes between local boards and schools in the development and implementation of school improvement plans under G.S. 115C-105.27. This process shall provide for final resolution of the disputes. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(a); 1993, c. 321, s. 144.2(a); 1995, c. 272, s. 1; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

School-Based Child and Family Team Initiative. — Session Laws 2007-323, s. 10.9(a)-(f), as reenacted for the 2009-2011 fiscal biennium by Session Laws 2009-451, s. 10.13, provides: "(a) School-Based Child and Family Team Initiative established. —

"(1) Purpose and duties. — There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

"a. The development of a strong infrastructure of interagency collaboration;

"b. One child, one team, one plan;

"c. Individualized strengths-based care;

"d. Accountability;

"e. Cultural competence;

"f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency;

"g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based;

"h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible;

"i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community; and

"j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.

"(2) Program goals and services. — In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall:

"a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.

"b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.

"c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.

"d. Promote practices that are known to be effective based upon research or national best practice standards.

"e. Review services provided across affected State agencies to ensure that children's needs are met.

"f. Eliminate cost shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.

"g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

"(3) Local level responsibilities. — In coordination with the North Carolina Child and Family Leadership Council (Council), the local board of education shall establish the School-Based Child and Family Team Initiative (Initiative) at designated schools and shall appoint the Child and Family Team Leaders who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:

"a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.

"b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

"c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.

"d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.

"e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues.

"A representative from each named or otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

"(4) Reporting requirements. — School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report to the North Carolina General Assembly. The report shall include the following:

"a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children;

"b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment;

"c. The amount and source of funds expended to implement the Initiative;

"d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring;

"e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes; and

"f. Recommendations on needed improvements.

"(5) Local advisory committee. — In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross agency collaborative or council, or shall form a new group, to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health, the directors of the local management entity, the chief district court judge, the chief district court counselor, the director of a school-based or school-linked health center if a center is located within the catchment area of the School-Based Child and Family Team Initiative, and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative.

"The Local Child and Family Team Advisory Committee may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

"(1) Leadership Council established; location. — There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.

"(2) Purpose. — The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to increase the academic success and reduce out-of-home and out-of-county placements of children at risk of academic failure.

"(3) Membership. — The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as cochairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chairman of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.

"(4) The Council shall:

"a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.

"b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.

"c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.

"d. Establish criteria for defining success in local programs and ensure appropriate outcomes.

"e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.

"f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.

"g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office.

"The Council may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

"(c) Department of Health and Human Services. — The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

"(d) Department of Juvenile Justice and Delinquency Prevention. — The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

"(e) Administrative Office of the Courts. — The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

"(f) Department of Public Instruction. — The Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful."

For prior similar provisions, see Session Laws 2005-276, s. 6.24(a)-(f).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Editor's Note. — Session Laws 1989, c. 778, which added this section, provided in s. 2 that it was the intent of the General Assembly that the act be implemented with a minimum of regulations.

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

CASE NOTES

Payment Under Former Program. — The obvious intent of the former 115C-363.11(c) was to provide an incentive to teachers to participate in the pilot program by assuring them that discontinuation of the pilot program would not result in the loss of the enhanced pay they had earned by achieving Career I or Career II status. Williams v. Alexander County Bd. of Educ., 128 N.C. App. 599, 495 S.E.2d 406 (1998).

§ 115C-105.21. Local participation in the Program.

(a) Local school administrative units shall participate in the School-Based Management and Accountability Program.

(b) The School-Based Management and Accountability Program shall provide increased local control of schools with the goal of improving student performance. Local boards of education:

(1) Are allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-105.25; and

(2) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-105.26.

(c) The School-Based Management and Accountability Program shall be based upon an accountability, recognition, assistance, and intervention process in order to hold each school and the school's personnel accountable for improved student performance in the school. (1989, c. 778, s. 3; 1991, c. 331, s. 1; 1993, c. 263, s. 1; c. 522, s. 3; 1995, c. 272, s. 2; c. 450, s. 12; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Local Modification. — Burke County School Administrative Unit, Mecklenburg County School Administrative Unit: 1995, c. 450, s. 25(a).

§§ 115C-105.22 through 115C-105.24: Reserved for future codification purposes.

Part 2. School-Based Management.

§ 115C-105.25. Budget flexibility.

(a) Consistent with improving student performance, a local board shall provide maximum flexibility to schools in the use of funds to enable the schools to accomplish their goals.

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

(1) In accordance with a school improvement plan accepted under G.S. 115C-105.27, State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school. Funds allocated for teacher assistants may be transferred to reduce class size or to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated

teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(2) In accordance with a school improvement plan accepted under G.S. 115C-105.27, (i) State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of textbooks; (ii) State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom materials; and (iii) State funds allocated for noninstructional support personnel may be transferred only for teacher positions.

(2a) Up to three percent (3%) of State funds allocated for noninstructional support personnel may be transferred for staff development.

(3) No funds shall be transferred into the central office allotment category.

(4) Funds allocated for children with disabilities, for students with limited English proficiency, and for driver's education shall not be transferred.

(5) Funds allocated for classroom teachers may be transferred only for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the textbooks allotment category and the classroom materials/instructional supplies/equipment allotment category.

(5a) Positions allocated for classroom teachers may be converted to dollar equivalents to contract for visiting international exchange teachers. These positions shall be converted at the statewide average salary for classroom teachers, including benefits. The converted funds shall be used only to cover the costs associated with bringing visiting international exchange teachers to the local school administrative unit through a State-approved visiting international exchange teacher program and supporting the visiting exchange teachers.

(6) Funds allocated for vocational education may be transferred only in accordance with any rules that the State Board of Education considers appropriate to ensure compliance with federal regulations.

(7) Funds allocated for career development shall be used in accordance with Section 17.3 of Chapter 324 of the 1995 Session Laws.

(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; or (iii) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7.

(9) Funds allocated in the Alternative Schools/At-Risk Student allotment shall be spent only for alternative learning programs, at-risk students, and school safety programs. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(h)-(k); 1998-212, s. 9.20(b); 1999-237, s. 8.25(c); 2001-424, s. 28.22; 2005-276, s. 7.22(a); 2006-69, s. 3(b).)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.21A.

Session Laws 2005-276, s. 7.22(b), provides: "The Visiting International Faculty Program is a State-approved visiting international exchange teacher program."

Session Laws 2005-276, s. 7.32(c), provides: "During the first year of its operation, a high school established under G.S. 115C-238.50 shall be allotted a principal regardless of the number of State-paid teachers assigned to the school or the number of students enrolled in the school. The budget flexibility authorized by G.S. 115C-105.25 does not apply to these positions."

Session Laws 2005-276, ss. 7.61(a) and (b), provide: "(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

"(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-451, s. 7.8(a), provides: "The State Board of Education is authorized to adopt emergency rules in accordance with G.S. 150B-21.1A to grant maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. These rules:

"(1) Shall authorize the transfer of textbook funds to other allotments to manage funding cuts; and

"(2) Shall not permit the transfer of funds from school-based positions to the central office."

Session Laws 2009-451, s. 7.8(b), provides: "For fiscal years 2009-2010 and 2010-2011, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate with the goal of protecting direct classroom services and services for students at risk and children with special needs. Local school administrative units shall implement administrative and other operating efficiencies and minimize the dismissal of classroom-based personnel by maximizing funds received from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Allocation of teachers and class size requirements in grades K-3 shall remain unchanged."

Session Laws 2009-451, s. 7.8(c), provides: "Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit on the basis of average daily membership."

Session Laws 2009-451, s. 7.8(d), provides: "Each unit shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 115C-105.26. Waivers of State laws, rules, or policies.

(a) When included as part of a school improvement plan accepted under G.S. 115C-105.27, local boards of education shall submit requests for waivers of State laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school's ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

(1) State laws pertaining to class size and teacher certification; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

(c) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that affect the organization, duties, and assignment of central office staff only. However, none of the duties to be performed under G.S. 115C-436 may be waived.

(c1) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that require that each local school administrative unit provide at least one alternative school or at least one alternative learning program.

(d) Notwithstanding subsections (b) and (c) of this section, the State Board shall not grant waivers of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board.

(e) Notwithstanding subsection (b) of this section, the State Board may grant requests received from local boards for waivers of State laws, rules, or policies pertaining to the placement of principals on the State salary schedule for public school administrators in order to provide financial incentives to encourage principals to accept employment in a school that has been identified as low-performing under G.S. 115C-105.37. The State Board shall act on requests under this subsection at the first Board meeting following receipt of each request.

(f) Except as provided in subsection (e) of this section, the State Board shall act within 60 days of receipt of all requests for waivers under this section.

(g) The State Board shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or modified or whether the Board should recommend to the General Assembly the repeal or modification of any laws. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1999-237, s. 8.25(b); 2006-153, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.21B.

Effect of Amendments. — Session Laws 2006-153, s. 2, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, substituted "size and teacher certification" for "size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1" in subdivision (b)(1).

§ 115C-105.27. Development and approval of school improvement plans.

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35 and the goals set out in the mission statement for the public schools adopted by the State Board of Education. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

All school improvement plans shall be, to the greatest extent possible, data-driven. School improvement teams shall analyze student data to identify root causes for problems and to determine actions to address them. School improvement plans shall contain clear, unambiguous targets, explicit indicators and actual measures, and expeditious time frames for meeting the measurement standards.

(b) The strategies for improving student performance:

(1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;

(1a) Shall, if the school serves students in kindergarten or first grade, include a plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade level;

(2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;

(3) May include a decision to use State funds in accordance with G.S. 115C-105.25;

(4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;

(5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26;

(6) Shall include a plan to provide a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team; and

(7) Shall include a plan to provide duty-free instructional planning time for every teacher under G.S. 115C-301.1, with the goal of providing an average of at least five hours of planning time per week.

(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

(d) The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

(e) A school improvement plan shall remain in effect for no more than two years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(b); 1993, c. 38, s. 1; c. 263, s. 2; c. 321, s. 144.2(b); 1995, c. 272, s. 3; c. 450, s. 13; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3; 1997-159, s. 1; 1997-443, s. 8.29(r)(2); 1999-271, s. 1; 1999-397, s. 1; 2000-67, s. 8.1; 2001-424, s. 28.30(c); 2006-153, s. 1; 2009-223, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.22. The subsection (b1) designation was deleted at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2006-153, s. 1, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, designated the previously undesignated paragraphs as subsections (a) through (e); added subdivisions (b)(6) and (7); and made a minor punctuation change.

Session Laws 2009-223, s. 2, effective June 30, 2009, and applicable beginning with the 2009-2010 school year, in subsection (a), added "and the goals set out in the mission statement for the public schools adopted by the State Board of Education" at the end of the first sentence, and added the second paragraph; and in subsection (e), substituted "two years" for "three years" in the first sentence.

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

§§ 115C-105.28, 115-105.29: Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 3.

Editor's Note. — The numbers of these sections were assigned by the Revisor of Statutes, the numbers in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.23 and 115C-105.24. Former G.S. 115C-105.23 and former G.S. 115C-105.24 were recodified as G.S. 115C-105.28 and G.S. 115C-105.29 as part of the recodification of Part 4 of Article 16 of Chapter 115C of the General Statutes, and then repealed.

§ 115C-105.30. Distribution of staff development funds.

Any funds the local board of education makes available to an individual school building to implement the school improvement plan at that school shall be used in accordance with that plan.

Each local board shall distribute seventy-five percent (75%) of the funds in the staff development funding allotment to the schools to be used in accordance with that school's school improvement plan. By October 1 of each year, the principal shall disclose to all affected personnel the total allocation of all funds available to the school for staff development and the superintendent shall disclose to all affected personnel the total allocation of all funds available at the system level for staff development. At the end of the fiscal year, the principal shall make available to all affected personnel a report of all disbursements from the building-level staff development funds, and the superintendent shall make available to all affected personnel a report of all disbursements at the system level of staff development funds. (1993, c. 321, s. 144.2(c); 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.25.

Session Laws 2003-284, s. 7.34, provides that local boards of education may use up to ten percent (10%) of State funds allocated for staff development to contract with Regional Education Services Alliances without such funding being subject to the provisions of G.S. 115C-105.30. Additional funds distributed pursuant to G.S. 115C-105.30 may also be used to contract with Regional Education Services Alliances.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5, is a severability clause.

§ 115C-105.31. Creation of the Task Force on School-Based Management.

(a) There is created the Task Force on School-Based Management under the State Board of Education.

The Task Force shall be composed of 21 members appointed as follows:

(1) The Superintendent of Public Instruction;
(2) One member of the State Board of Education, one parent of a public school child, and two at-large members appointed by the State Board of Education;
(3) Two members of the Senate appointed by the President Pro Tempore of the Senate;
(4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;
(6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving recommendations from The North Carolina State School Boards Association, Inc.;
(7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;
(8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;
(9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
(10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
(11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
(12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
(13) One representative of business and industry appointed by the Governor;
(14) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina;
(15) One county commissioner appointed by the State Board of Education after receiving recommendations from the North Carolina Association of County Commissioners; and
(16) The Secretary of Health and Human Services or the Secretary's designee.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The Task Force on School-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:
(1) Advise the State Board of Education and Secretary of Health and Human Services on the development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program;
(2) Advise the State Board of Education and the Secretary of Health and Human Services on how to assist the public schools and residential schools so as to facilitate the implementation of school-based management;
(3) Advise the State Board of Education and Secretary of Health and Human Services about publications to be produced by the Department

of Public Instruction on the development and implementation of school improvement plans;

(4) Report annually to the State Board of Education on the implementation of school-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve school-based management.

(c) The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The State Board of Education shall appoint a Director of the Task Force on School-Based Management. (1991 (Reg. Sess., 1992), c. 900, s. 76(a); 1993, c. 321, s. 144.2(d); 1993 (Reg. Sess., 1994), c. 677, s. 7; 1995, c. 324, s. 17.8(a); 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3; 1998-131, s. 9.)

Editor's Note. — Session Laws 1995, c. 324, s. 17.8(b) provides that the task force shall advise the State Board of Education on implementation of building-level plans and on how to facilitate the implementation of site-based management, shall review publications on the development and implementation of building-level plans, and shall report annually to the State Board of Education.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.26. The subdivision designations (a)(13), (a)(14), and (a)(15) were also assigned by the Revisor of Statutes, the designations in that act having been (a)(16), (a)(17), and (a)(18).

Session Laws 1998-131, s. 19, made amendments to this section effective July 1, 1998, contingent on funding appropriated pursuant to Session Laws 1998-131, s. 9. The necessary appropriations were made.

§ 115C-105.32. Parent involvement programs and conflict resolution programs as part of school improvement plans.

A school is encouraged to include a comprehensive parent involvement program as part of its school improvement plan under G.S. 115C-105.27. The State Board of Education shall develop a list of recommended strategies that it determines to be effective, which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools. The Board shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year.

A school is encouraged to review its need for a comprehensive conflict resolution program as part of the development of its school improvement plan under G.S. 115C-105.27. If a school determines that this program is needed, it may select from the list developed by the State Board of Education under G.S. 115C-81(a4) or may develop its own materials and curricula to be approved by the local board of education. (1993, c. 509, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. — Session Laws 1993, c. 509, ss. 2 and 3, effective July 24, 1993, have been codified as this section at the direction of the Revisor of Statutes.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.27.

§ 115C-105.33. Safe and orderly schools.

A school improvement team or a parent organization at a school may ask the local board of education to provide assistance in promoting or restoring safety and an orderly learning environment at a school. The school improvement team or parent organization shall file a copy of this request with the State Board. If the local board fails to provide adequate assistance to the school, then the school improvement team or parent organization may ask the State Board to provide an assistance team to the school.

The State Board may provide an assistance team, established under G.S. 115C-105.38, to a school in order to promote or restore safety and an orderly learning environment at that school if one of the following applies:

(1) The local board of education or superintendent requests that the State Board provide an assistance team to a school and the State Board determines that the school needs assistance.

(2) The State Board determines within 10 days after its receipt of the request for assistance from a school improvement team or parent organization of a school that the school needs assistance and that the local board has failed to provide adequate assistance to that school.

If an assistance team is assigned to a school under this section, the team shall spend a sufficient amount of time at the school to assess the problems at the school, assist school personnel with resolving those problems, and work with school personnel and others to develop a long-term plan for restoring and maintaining safety and an orderly learning environment at the school. The assistance team also shall make recommendations to the local board of education and the superintendent on actions the board and the superintendent should consider taking to resolve problems at the school. These recommendations shall be in writing and are public records. If an assistance team is assigned to a school under this section, the powers given to the State Board and the assistance team under G.S. 115C-105.38 and G.S. 115C-105.39 shall apply as if the school had been identified as low-performing under this Article. (1997-443, s. 8.29(a)(2).)

§ 115C-105.34: Reserved for future codification purposes.

Part 3. School-Based Accountability.

§ 115C-105.35. Annual performance goals.

(a) The School-Based Management and Accountability Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each school in the State in order to measure the growth in performance of the students in each individual school. During the 2004-2005 school year and at least every five years thereafter, the State Board shall evaluate the accountability system and, if necessary, modify the testing standards to assure the testing standards continue to reasonably reflect the level of performance necessary to be successful at the next grade level or for more advanced study in the content area.

As part of this evaluation, the Board shall, where available, review the historical trend data on student academic performance on State tests. To the extent that the historical trend data suggest that the current standards for student performance may not be appropriate, the State Board shall adjust the standards to assure that they continue to reflect the State's high expectations for student performance.

(b) For purposes of this Article, the State Board shall include a "closing the achievement gap" component in its measurement of educational growth in student performance for each school. The "closing the achievement gap" component shall measure and compare the performance of each subgroup in a school's population to ensure that all subgroups as identified by the State Board are meeting State standards.

(c) The State Board shall consider incorporating into the School-Based Management and Accountability Program a character and civic education component which may include a requirement for student councils. (1995 (Reg. Sess., 1996), c. 716, s. 3; 2001-424, s. 28.30(a); 2003-284, s. 7.40(c); 2004-124, s. 7.12(a).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32, made this part effective upon ratification. The Act was ratified June 21, 1996.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.28.

§ 115C-105.36. Performance recognition.

(a) The personnel in schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal, assistant principal, instructional personnel, instructional support personnel, and teacher assistants (i) serving students in one or more of the grades kindergarten through 12 or (ii) assigned to a public school prekindergarten program that is located within a public elementary school and is designed to prepare students for kindergarten at that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards to the local school administrative units in which the eligible schools are located. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for awards to the personnel. Each local school administrative unit is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following the local unit's receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the local unit's receipt of the funds. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1997-443, s. 8.14; 1998-220, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.29.

Session Laws 2009-451, s. 7.11(a), provides: "Notwithstanding G.S. 115C-105.36, the State Board of Education shall place a one-year moratorium on financial awards paid to school personnel in the 2009-2010 fiscal year based on 2008-2009 student academic performance."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For note on Leandro

v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

§ 115C-105.37. Identification of low-performing schools.

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(a1) By July 10 of each year, each local school administrative unit shall do a preliminary analysis of test results to determine which of its schools the State Board may identify as low-performing under this section. The superintendent then shall proceed under G.S. 115C-105.39. In addition, within 30 days of the initial identification of a school as low-performing by the local school administrative unit or the State Board, whichever occurs first, the superintendent shall submit to the local board a preliminary plan for addressing the needs of that school, including how the superintendent and other central office administrators will work with the school and monitor the school's progress. Within 30 days of its receipt of this plan, the local board shall vote to approve, modify, or reject this plan. Before the board makes this vote, it shall make the plan available to the public, including the personnel assigned to that school and the parents and guardians of the students who are assigned to the school, and shall allow for written comments. The board shall submit the plan to the State Board within five days of the board's vote. The State Board shall review the plan expeditiously and, if appropriate, may offer recommendations to modify the plan. The local board shall consider any recommendations made by the State Board.

(b) Each school that the State Board identifies as low-performing shall provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has "failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in the school are performing below grade level." This notification also shall include information about the plan developed under subsection (a1) of this section and a description of any additional steps the school is taking to improve student performance. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1997-221, s. 20(b); 1997-443, s. 8.45; 1998-59, s. 1; 2001-424, s. 29.4(a).)

Cross References. — As to the purposes of The Excellent Schools Act, Session Laws 1997-221, see the Editor's Note under G.S. 115C-105.38A.

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.30.

Session Laws 2007-445, s. 1(a)-(c), provides: "(a) The State Board of Education shall designate schools which meet two or more of the following criteria as high-need schools:

"(1) More than forty-five percent (45%) of students perform at Level 1 or Level 2 on end-of-grade or end-of-course tests,

"(2) Teacher turnover rate is greater than twenty-five percent (25%), or

"(3) More than eighty percent (80%) of students qualify for free or reduced-price lunches.

"(b) Beginning with the 2008-2009 school year, to ensure that the schools designated as high-need schools by the State Board of Education have the high quality staff and the additional support they need, the following modifications to law, policy, or both shall apply:

"(1) National Board Certified Teachers who serve as mentors, literacy coaches, or in other nonadministrative instructional leadership positions at these schools shall retain the twelve percent (12%) salary increment for NBPTS certification, notwithstanding G.S. 115C-296.2.

"(2) National Board Certified Teachers, teachers of the year, and other categories of accomplished teachers designated by the State Board of Education shall be given the academic freedom at these schools to use research-based practices in the classroom that go beyond the standard course of study.

"(c) The State Board of Education shall consider the following strategies to ensure that the high-need schools have the high quality staff and the additional support they need and shall report by January 15, 2008, to the Joint Legislative Education Oversight Committee on the cost of implementing for the 2008-2009 fiscal year:

"(1) Adding additional teacher positions at these schools to reduce class size.

"(2) Providing incentives to attract National Board Certified Teachers to these schools.

"(3) Employing teachers at these schools for 11 months. These teachers shall use the extra month of employment for curriculum development, staff development, and planning for the next school year."

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

§ 115C-105.37A. Continually low-performing schools; definition; assistance and intervention; reassignment of students.

(a) Definition of Continually Low-Performing Schools. — A continually low-performing school is a school that has received State-mandated assistance and has been designated by the State Board as low performing for at least two of three consecutive years. If the State Board identifies a school as continually low performing:

(1) The school improvement team at that school shall review its school improvement plan to ensure consistency with the plan adopted pursuant to G.S. 115C-105.38(b)(3), and

(2) The plan must be reviewed and approved by the State Board of Education.

(b) Assistance to Schools That Are Low Performing for Two Years. — If a school that has received State-mandated assistance is designated by the State Board as low performing for two consecutive years or for two of three consecutive years, the State Board shall provide a series of progressive assistance and intervention strategies to that school. These strategies shall be designed to improve student achievement and to maintain student achievement at appropriate levels and may include, to the extent that funds are available for this purpose, assistance such as reductions in class size, extension of teacher and assistant principal contracts, extension of the instructional year, and grant-based assistance.

(c) Intervention in Schools That Are Low Performing for Three or More Years. — The State Board of Education shall develop and implement a series of actions for providing assistance and intervention to schools that have previously received State- mandated assistance and have been designated by the State Board as low performing for three or more consecutive years or for at least three out of four years. These actions shall be the least intrusive actions that are consistent with the need to improve student achievement at each such school and shall be adapted to the unique characteristics of each such school and the effectiveness of other actions developed or implemented to improve student achievement at each such school. (2001-424, s. 29.3; 2009-223, s. 3.)

Evaluation of Initiatives to Assist High-Priority Schools. — Session Laws 2001-424, ss. 29.6(a) to (d), as amended by Session Laws 2002-126, s. 7.28, provide:

"(a) In order for the high-priority schools identified in Section 29.1 of this act [s. 29.1 of Session Laws 2001-424, which provided for immediate assistance to the highest priority elementary schools] to remain eligible for the additional resources provided in this section [s. 29.6 of Session Laws 2001-424], the schools must meet the expected growth for each year and must achieve high growth for at least two out of three years based on the State Board of Education's annual performance standards set for each school. No adjustment in the allotment of resources based on performance shall be made until the 2004-2005 school year.

"(b) All teaching positions allotted for students in high-priority schools and continually low-performing schools in those grades targeted for smaller class sizes shall be assigned to and teach in those grades and in those schools. In grades K-3 in high-priority schools, the maximum class size for the portion of the 2001-2002 school year beginning with January 1, 2002, shall be no more than two students above the allotment ratio in that grade. The maximum class size for subsequent school years in grades K-3 in high priority schools and in grades K-5 in continually low-performing schools shall be no more than one student above the allotment ratio in that grade. The Department of Public Instruction shall monitor class sizes at these schools at the end of the first month of school and report to the State Board of Education on the actual class sizes in these schools. If the local school administrative unit notifies the State Board of Education that they do not have sufficient resources to adhere to the class size maximum requirements, the State Board shall verify the accuracy of the request. If additional resources are determined necessary, the State Board of Education may allocate additional teaching positions to the unit from the Reserve for Average Daily Membership Adjustments.

"(c) If a local board of education determines that the local school administrative unit is unable to implement the class-size limitation in accordance with this section [s. 29.6 of Session Laws 2002-424] for any high-priority school located in the unit, the local board may request a waiver for the school for the 2001-2002 school year. The request shall include the documentation required in G.S. 115C-105.26(a). If the State Board grants the waiver, the State Board shall withdraw the additional teacher positions allotted to the local school administrative unit for the school and reinstate the regular allotment for teacher assistants for the school.

"If a local board of education determines that the local school administrative unit is unable to implement the class-size limitation and other high priority initiatives in accordance with this section for any high-priority school located in the unit for the 2002-2003 school year, the local board may request a waiver for the school from the State Superintendent of Public instruction for the 2002-2003 school year. The Superintendent shall evaluate the school's efforts to meet the goals of high priority schools. The Superintendent may grant a waiver for the 2002-2003 school year if the Superintendent finds that the school is making efforts comparable to those required for high-priority schools and that the educational progress of students in the school is satisfactory.

"(d) Of funds appropriated from the General Fund to State Aid to Local School Administrative Units, the sum of five hundred thousand dollars ($500,000) for fiscal year 2001-2002 and the sum of five hundred thousand dollars ($500,000) for fiscal year 2002-2003 shall be used by the State Board of Education to contract with an outside organization to evaluate the initiatives set forth in this act.

"The evaluation shall include:

"(1) An assessment of the overall impact these initiatives have had on student achievement;

"(2) An assessment of the effectiveness of each individual initiative set forth in this act [Session Laws 2001-424] in improving student achievement;

"(3) An identification of changes in staffing patterns, instructional methods, staff development, and parental involvement as a result of these initiatives;

"(4) An accounting of how funds and personnel resources made available for these schools were utilized and the impact of varying patterns of utilization on changes in student achievement;

"(5) An assessment of the impact of bonuses for mathematics, science, and special education teachers on (i) the retention of these teachers in the targeted schools, (ii) the recruitment of teachers in these specialties into targeted schools, (iii) the recruitment of teachers certified in these disciplines into teaching, (iv) student achievement in schools at which these teachers receive these bonuses; and

"(6) Recommendations for the continuance and improvement of these initiatives.

"The State Board of Education shall make an initial report to the Joint Legislative Education Oversight Committee regarding the results of this evaluation by December 1, 2002, and annually thereafter. The State Board of Education shall submit its recommendations for changes to these initiatives to the Committee at any time."

Flexibility for Highest Priority Elementary Schools. — Session Laws 2005-276, s. 7.10, provides: "The State Board of Education may allow high priority schools that have made high growth for three consecutive years to be removed from the list of high priority schools. If a local board of education chooses to have a school removed from the list of high priority schools, the additional high priority funding for that school shall be discontinued."

Phaseout of Special Supplementary Funding for High Priority Schools. — Session Laws 2007-323, s. 7.34(a) provide: "(a) The State Board of Education may develop a policy for a two-year phaseout of the special supplementary funding currently provided to the two remaining high priority elementary schools and may use funds in the ADM Contingency Reserve to support any additional cost of the two-year phaseout."

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007.'"

Session Laws 2007-323, s. 32.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5, contains a severability clause.

Effect of Amendments. — Session Laws 2009-223, s. 3, effective June 30, 2009, and applicable beginning with the 2009-2010 school year, designated the previously existing provisions of subsection (a) as subsection (a) and subdivision (a)(1), added subdivision (a)(2), and made minor stylistic and punctuation changes.

§ 115C-105.38. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department of Public Instruction shall, with the approval of the State Board, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

(1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.

(2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.

(3) Collaborate with school staff, central offices, and local boards of education in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.

(4) Make recommendations as the school develops and implements this plan.

(5) Review the school's progress.

(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.

(b1) Report to the State Board of Education if a school and its local board of education are not responsive to the team's recommendations. A copy of that report shall be made available to the local board, and the local board shall have an opportunity to respond. Notwithstanding G.S. 115C-36 and other provisions of this Chapter, if the State Board confirms that the school and local board have failed to take appropriate steps to improve student performance at that school, the State Board shall assume all powers and duties previously conferred upon that local board and that school and shall have general control and supervision of all matters pertaining to that school until student performance at the school meets or exceeds the standards set for the school. The State Board may, as it considers appropriate, delegate any powers and duties to that local board or school before the school meets or exceeds those standards.

(c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continues or that the State Board take further action under G.S. 115C-105.39.

(d) The State Board shall annually review the progress made in identified low-performing schools. (1995 (Reg. Sess., 1996), c. 716, s. 3; 2002-178, s. 7.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Law 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.31.

§ 115C-105.38A. Teacher competency assurance.

(a) General Knowledge Test. —

(1) Each assistance team assigned to a low-performing school during the 1997-98 school year shall review the team's evaluations of certified staff members to determine which staff members have been designated by the team as Category 3 teachers. The assistance team shall then determine whether lack of general knowledge contributed to the Category 3 designation. If the assistance team determines that a certified staff member's lack of general knowledge contributed to that staff member being designated as a Category 3 teacher, the assistance team shall submit the staff member's name to the State Board. Upon receipt of the notification, the State Board shall require that the certified staff members identified by the assistance teams demonstrate their general knowledge by acquiring a passing score on a test designated by the State Board. The State Board shall administer the general knowledge test required under this subdivision at the end of the 1997-98 school year.

(2) During the 1998-99 school year and thereafter, either the principal assigned to a low-performing school or the assistance team assigned to a low-performing school may recommend to the State Board that a certified staff member take a general knowledge test. A principal or an assistance team may make this recommendation if the principal or the assistance team determines that the certified staff member's performance is impaired by the staff member's lack of general knowledge. After receipt of the notification, but prior to the end of the fiscal year, the State Board shall require that all certified staff members identified under this subdivision demonstrate their general knowledge by acquiring a passing score on a test designated by the State Board.

(b) Repealed by Session Laws 1998-5, s. 1, effective June 9, 1998.

(c) Remediation. — Certified staff members who do not acquire a passing score on the test required under subsection (a) of this section shall engage in a remediation plan based upon the deficiencies identified by the test, or an assistance team, or a principal. The remediation plan for deficiencies of individual certified staff members shall consist of up to a semester of university or community college training or coursework or other similar activity to correct the deficiency. The remediation shall be developed by the State Board of Education in consultation with the Board of Governors of The University of North Carolina. The State Board shall reimburse the institution providing the remediation any tuition and fees incurred under this section. If the remediation plan requires that the staff member engage in a full-time course of study or training, the staff member shall be considered on leave with pay.

(d) Retesting; Dismissal. — Upon completion of the remediation plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall begin a dismissal proceeding under G.S. 115C-325(q)(2a).

(e) Repealed by Session Laws 1998-5, s. 1, effective June 9, 1998.

(f) Other Actions Not Precluded. — Nothing in this section shall be construed to restrict or postpone the following actions:

(1) The dismissal of a principal under G.S. 115C-325(q)(1);
(2) The dismissal of a teacher, assistant principal, director, or supervisor under G.S. 115C-325(q)(2);
(3) The dismissal or demotion of a career employee for any of the grounds listed under G.S. 115C-325(e);
(4) The nonrenewal of a school administrator's or probationary teacher's contract of employment; or
(5) The decision to grant career status.

(g) Repealed by Session Laws 1998-5, s. 1, effective June 9, 1998. (1997-221, s. 3(a); 1998-5, s. 1.)

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.

(a) Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under G.S. 115C-325 to dismiss or demote the principal. The principal may be retained in the same position without a plan for remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under G.S. 115C-325, or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under G.S. 115C-325 to dismiss or demote the principal, then the State Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under G.S. 115C-325 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under G.S. 115C-325(q)(1).

(b) The State Board shall proceed under G.S. 115C-325(q)(2) for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with G.S. 115C-325(q)(2).

(c) The State Board may appoint an interim superintendent in a local school administrative unit:

(1) Upon the identification of more than half the schools in that unit as low-performing under G.S. 115C-105.37; or

(2) Upon the recommendation from an assistance team assigned to a school located in that unit that has been identified as low-performing under G.S. 115C-105.37. This recommendation shall be based upon a finding that the superintendent has failed to cooperate with the assistance team or has otherwise hindered that school's ability to improve.

The State Board may assign any of the powers and duties of the local superintendent and the local finance officer to the interim superintendent that the Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The interim superintendent shall perform all of these assigned powers and duties. The State Board of Education may terminate the contract of any local superintendent entered into on or after July 1, 1996, when it appoints an interim superintendent. The Administrative Procedure Act shall apply to that decision. Neither party to that contract is entitled to damages.

(d) In the event the State Board has appointed an interim superintendent and the State Board determines that the local board of education has failed to cooperate with the interim superintendent or has otherwise hindered the ability to improve student performance in that local school administrative unit or in a school in that unit, the State Board may suspend any of the powers and duties of the local board of education that the State Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The State Board shall perform all of these assigned powers and duties for a period of time to be specified by the State Board.

(e) If the State Board suspends any of the powers and duties of the local board of education under subsection (d) of this section and subsequently determines it is necessary to change the governance of the local school administrative unit in order to improve student performance, the State Board may recommend this change to the General Assembly, which shall consider, at its next session, the future governance of the identified local school administrative unit. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1998-59, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.32.

CASE NOTES

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

§ 115C-105.40. Student academic performance standards.

The State Board of Education shall develop a plan to create rigorous student academic performance standards for kindergarten through eighth grade and student academic performance standards for courses in grades 9-12. The performance standards shall align, whenever possible, with the student academic performance standards developed for the National Assessment of Educational Progress (NAEP). The plan also shall include clear and understandable methods of reporting individual student academic performance to parents. (1997-221, s. 3(e).)

Editor's Note. — Session Laws 1997-221, s. 3(e) was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Legal Periodicals. — For North Carolina's approach to educational reform and the use of charter schools, see 79 N.C.L. Rev. 493 (2001).

§ 115C-105.41. Students who have been placed at risk of academic failure; personal education plans.

Local school administrative units shall identify students who are at risk for academic failure. Identification shall occur as early as can reasonably be done and can be based on grades, observations, State assessments, and other factors that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused intervention and accelerated activities should include research-based best practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section. (2001-424, s. 28.17(e); 2009-542, s. 1.)

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(a), provides: "The State Board of Education shall provide the Joint Legislative Education Oversight Committee with a detailed analysis of the current resources allocated to meet the needs of all students subject to the Statewide Student Accountability Standards, and in addition, shall submit recommendations regarding other resources that would best assist students in meeting these new standards."

Session Laws 2001-424, s. 28.17(g), provides: "Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning."

Session Laws 2001-424, s. 28.17(h), as amended by 2001-487, s. 116, provides: "Students in a local school shall not be subject to field tests or national tests during the two-week period preceding the administration of the end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams. No school shall participate in more than two field tests at any one grade level during a school year unless:

"(1) That school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests; or

"(2) The State Board of Education makes written findings, based on information provided by the Department of Public Instruction, that an additional field test must be administered at that school to ensure the reliability and validity of a specific test."

Session Laws 2001-424, s. 28.17(j), provides: "The State Board of Education shall develop and report to the Joint Legislative Education Oversight Committee on its objectives for the Statewide Testing Program and on the implementation of that Program. The report shall include:

"(1) A statement of the relationship between these objectives and the tests currently administered under the Program;

"(2) An analysis of whether the current tests appropriately achieve these objectives;

"(3) A statement of any actions that may be needed to coordinate the objectives and the tests more effectively; and

"(4) Strategies for communicating the objectives of the Program, the tests administered under the Program, and the relationship between these objectives and tests to principals, teachers, parents, and students throughout the State."

Editor's Note. — Session Laws 2001-424, s. 28.17(k), made this section effective December 1, 2001.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2007-323, s. 7.26(a), (b), provides: "(a) G.S. 115C-105.41 prohibits charging tuition or fees to Students at Risk for Academic Failure. Effective July 1, 2007, local school administrative units shall formally communicate to at-risk students and their parents or guardians that there will be no charge for participation in intervention activities/practices offered by the local school administrative units to at-risk students, or for transportation necessary for participation in the intervention activities.

"(b) Effective July 1, 2007, local school administrative units shall formally communicate to students and their parents or guardians that tuition and fees will not be charged for summer school courses that are required for remediation or courses that are necessary for the student to meet graduation requirements."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-542, s. 1, effective August 28, 2009, and applicable beginning with the 2009-2010 school year, in the first paragraph, substituted "who are" for "who have been placed" in the first sentence, and, in the third sentence, substituted "No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student," for "At the beginning of the school year," substituted "developed or updated for any student at risk of academic failure who is not performing" for "developed for any student not performing," and added "and other factors noted above" at the end; added the first sentence in the second paragraph; and added the last paragraph.

§§ 115C-105.42 through 115C-105.44: Reserved for future codification purposes.

Article 8C.

Local Plans For Alternative Schools/Alternative Learning Programs and Maintaining Safe and Orderly Schools.

§ 115C-105.45. Legislative findings.

The General Assembly finds that all schools should be safe, secure, and orderly. If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons. All schools must have plans, policies, and procedures for dealing with disorderly and disruptive behavior.

All schools and school units must have effective measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior. (1997-443, s. 8.29(r)(1).)

Editor's Note. — Session Laws 2005-276, ss. 7.61(a) and (b), provide: "(a) Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

"(b) To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Applied in Smith v. Jackson County Bd. of Educ., 168 N.C. App. 452, 608 S.E.2d 399, 2005 N.C. App. LEXIS 347 (2005).

§ 115C-105.46. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education:

(1) Shall adopt guidelines for developing local plans under G.S. 115C-105.47.

(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-105.47.

(3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare and implement local safe school plans in accordance with G.S. 115C-105.47.

(4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(c), for failure to fulfill the superintendent's duties under a local safe school plan.

(5) Shall adopt policies that define who is an at-risk student. (1997-443, s. 8.29(r)(1); 1999-397, s. 2; 2000-140, s. 22.)

§ 115C-105.47. Local safe school plans.

(a) Each local board of education shall develop a local school administrative unit safe school plan designed to provide that every school in the local school administrative unit is safe, secure, and orderly, that there is a climate of respect in every school, and that appropriate personal conduct is a priority for all students and all public school personnel. The board shall include parents, the school community, representatives of the community, and others in the development or review of this plan. The plan may be developed by or in conjunction with other committees.

(b) Each plan shall include each of the following components:

(1) Clear statements of the standard of behavior expected of students at different grade levels and of school personnel and clear statements of the consequences that will result from one or more violations of those standards. There shall be a statement of consequences for students under the age of 13 who physically assault and seriously injure a teacher or other individual on school property or at a school-sponsored or school-related activity. The consequences may include placement in an alternative setting.

(2) A clear statement of the responsibility of the superintendent for coordinating the adoption and the implementation of the plan, evaluating principals' performance regarding school safety, monitoring and evaluating the implementation of safety plans at the school level, and coordinating with local law enforcement and court officials appropriate aspects of implementation of the plan. The statement of responsibility shall provide appropriate disciplinary consequences that may occur if the superintendent fails to carry out these responsibilities. These consequences may include a reprimand in the superintendent's personnel file or withholding of the superintendent's salary, or both.

(3) A clear statement of the responsibility of the school principal for restoring, if necessary, and maintaining a safe, secure, and orderly school environment and of the consequences that may occur if the principal fails to meet that responsibility. The principal's duties shall include exhibiting appropriate leadership for school personnel and students, providing for alternative placements for students who are seriously disruptive, reporting all criminal acts under G.S. 115C-

288(g), and providing appropriate disciplinary consequences for disruptive students. The consequences to the principal that may occur shall include a reprimand in the principal's personnel file and disciplinary proceedings under G.S. 115C-325.

(4) Clear statements of the roles of other administrators, teachers, and other school personnel in restoring, if necessary, and maintaining a safe, secure, and orderly school environment.

(5) Procedures for identifying and serving the needs of students who are at risk of academic failure or of engaging in disruptive or disorderly behavior.

(6) Mechanisms for assessing the needs of disruptive and disorderly students and students who are at risk of academic failure, and providing them with services to assist them in achieving academically and in modifying their behavior, and removing them from the classroom when necessary.

(7) Measurable objectives for improving school safety and order.

(8) Measures of the effectiveness of efforts to assist students at risk of academic failure or of engaging in disorderly or disruptive behavior. The measures shall include an analysis of the effectiveness of procedures adopted under G.S. 115C-105.48 for students referred to alternative schools and alternative learning programs.

(9) Professional development clearly matched to the goals and objectives of the plan. This professional development shall include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior. Appropriate school personnel may include, but is not limited to, teachers, teacher assistants, school administrators, bus drivers, school resource officers, school psychologists, and school counselors. The training shall include instruction in positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. The appropriate personnel with priority for the training shall include those staff members who are most likely to be called upon to prevent or address disruptive or dangerous student behavior. Each local board of education shall include in this component of its safe school plan procedures to evaluate the effectiveness of this training in preventing or addressing disruptive or dangerous student behavior. Local boards of education are encouraged to use available sources of discretionary revenue to implement the plan to train personnel in the management of disruptive or dangerous student behavior. Local boards may only be required to implement the behavior management training component of the plan to the extent that funds have been appropriated for this purpose by the General Assembly or by local units of government. By January 1, 2006, local boards of education shall amend their safe school plans to include this training component.

(10) A plan to work effectively with local law enforcement officials and court officials to ensure that schools are safe and laws are enforced.

(11) A plan to provide access to information to the school community, parents, and representatives of the local community on the ongoing implementation of the local plan, monitoring of the local plan, and the integration of educational and other services for students into the total school program.

(12) The name and role description of the person responsible for implementation of the plan.

(13) Direction to school improvement teams within the local school administrative unit to consider the special conditions at their schools

and to incorporate into their school improvement plans the appropriate components of the local plan for:
  a. maintaining safe and orderly schools; and
  b. addressing the needs of students who are at risk of academic failure or who are disruptive or both.

(13a) A clear statement of the services that will be provided to students who are assigned to an alternative school or an alternative learning program.

(14) A clear and detailed statement of the planned use of federal, State, and local funds allocated for at-risk students and alternative schools and alternative learning programs.

(15) Any other information the local board considers necessary or appropriate to implement this Article.

A local board may develop its plan under this section by conducting a comprehensive review of its existing policies, plans, statements, and procedures to determine whether they: (i) are effective; (ii) have been updated to address recent changes in the law; (iii) meet the current needs of each school in the local school administrative unit; and (iv) address the components required to be included in the local plan. The board then may consolidate and supplement any previously developed policies, plans, statements, and procedures that the board determines are effective and updated, meet the current needs of each school, and meet the requirements of this subsection.

Once developed, the board shall submit the local plan to the State Board of Education and shall ensure the plan is available and accessible to parents and the school community. The board shall provide annually to the State Board information that demonstrates how the At-Risk Student Services/Alternative Schools Funding allotment has been used to (i) prevent academic failure and (ii) promote school safety.

(c) A local board may amend the plan as often as it considers necessary or appropriate. (1997-443, s. 8.29(r)(1); 1999-397, s. 2; 2005-205, s. 4.)

Cross References. —As to dissemination of criminal intelligence information, see G.S. 14-50.27A.

CASE NOTES

Applied in Smith v. Jackson County Bd. of Educ., 168 N.C. App. 452, 608 S.E.2d 399, 2005 N.C. App. LEXIS 347 (2005).

§ 115C-105.47A. Proposals to establish alternative learning programs or alternative schools.

(a) Before establishing any alternative learning program or alternative school, the local board of education shall develop a proposal to implement the program or school that includes all of the following:

(1) The educational and behavioral goals for students assigned to the program or school.

(2) The policies and procedures for the operation of the program or school based on the State Board's standards adopted under G.S. 115C-12(24). The policies and procedures shall address the assignment of students to the program or school.

(3) Identified strategies that will be used to improve student achievement and behavior.

(4) Documentation that similar programs and schools in or out of the State, or both, have demonstrated success in improving the academic achievement and behavior of students assigned to them.

(5) The estimated actual cost of operating the program or school. To the extent practicable, this shall include the cost of:

a. Staffing the program or school with teachers who have at least four years' teaching experience and who have received an overall rating of at least above standard on a formal evaluation and are certified in the areas and grade levels being taught;

b. Providing optimum learning environments, resources and materials, and high quality, ongoing professional development that will ensure students who are placed in the program or school are provided enhanced educational opportunities in order to achieve their full potential;

c. Providing support personnel, including school counselors, psychiatrists, clinical psychologists, social workers, nurses, and other professionals to help students and their families work out complex issues and problems;

d. Maintaining safe and orderly learning environments; and

e. Providing transitional supports for students exiting the program or school and reentering the referring school.

(6) Documented support of school personnel and the community for the implementation of the program or school.

(b) After the local board completes the proposal under subsection (a) of this section, the board shall submit the proposal to the State Board of Education for its review. The State Board shall review the proposal expeditiously and, if appropriate, may offer recommendations to modify the proposal. The local board shall consider any recommendations made by the State Board before implementing the alternative learning program or alternative school. (2005-446, s. 2.)

Editor's Note. — Session Laws 2005-446, s. 6, made this section effective September 29, 2005, and applicable to any new alternative learning program or alternative school to be implemented beginning with the 2006-2007 school year.

Session Laws 2005-446, s. 4, provides: "Before implementing success centers or any other alternative learning program or alternative school in New Hanover County, the New Hanover Board of Education shall comply with G.S. 115C-105.47A established in Section 2 of this act. The State Board of Education shall submit to the Joint Legislative Education Oversight Committee a copy of the proposal submitted by the New Hanover Board of Education and a copy of any recommendations made by the State Board."

Session Laws 2005-446, s. 5, provides: "Nothing in this act requires the North Carolina General Assembly to appropriate funds for the implementation of alternative learning programs or alternative schools."

§ 115C-105.48. Placement of students in alternative schools/alternative learning programs.

(a) Prior to referring a student to an alternative school or an alternative learning program, the referring school shall:

(1) Document the procedures that were used to identify the student as being at risk of academic failure or as being disruptive or disorderly.

(2) Provide the reasons for referring the student to an alternative school or an alternative learning program.

(3) Provide to the alternative school or alternative learning program all relevant student records, including anecdotal information.

(b) When a student is placed in an alternative school or an alternative learning program, the appropriate staff of the alternative school or alternative learning program shall meet to review the records forwarded by the referring school and to determine what support services and intervention strategies are recommended for the student. The parents shall be encouraged to provide input regarding the students' needs. (1999-397, s. 2.)

§§ 115C-105.49 through 115C-105.52: Reserved for future codification purposes.

ARTICLE 9.

Education of Children With Disabilities.

Part 1. State Policy.

§ 115C-106: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — This section was also amended by Session Laws 2006-203, s. 31, effective July 1, 2007 and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, which substituted "G.S. 143C-1-1" for "G.S. 143C-1" at the end of subsection (a). The section is set out above as repealed."

Part 1A. General Provisions.

§ 115C-106.1. State goal.

The goal of the State is to provide full educational opportunity to all children with disabilities who reside in the State. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5; 1977, c. 927, ss. 1, 2; 1979, 2nd Sess., c. 1295; 1981, c. 423, s. 1; 1997-443, s. 11A.47; 2006-69, s. 2.)

Autism Spectrum Disorder and Public Safety Study. — Session Laws 2009-451, s. 10.21D(a)-(i), provides: "(a) There is established the Joint Study Committee on Autism Spectrum Disorder and Public Safety (Committee). The Committee shall consist of members and co-chairs appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

"(b) The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

"(c) The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

"(d) The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

"(e) Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

"(f) The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Funds for the Committee shall be as appropriated to the General Assembly for this purpose.

"(g) The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

"(h) The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

"(i) The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before May 1, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before December 31, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on December 31, 2010, or upon the filing of is final report, whichever occurs first."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

Session Laws 2007-284, ss. 1 and 2, provide: "1. The General Assembly finds that additional data are needed to determine the adequacy with which the State's teacher education programs are preparing teachers to teach students with disabilities. The Board of Governors of The University of North Carolina, in consultation with the State Board of Education, shall study the effectiveness of the current teacher education programs in preparing new teachers to educate students with disabilities.

"2. The Board of Governors shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by May 15, 2008. The report shall include (i) evidence of the effectiveness of the current teacher education programs in preparing students to educate students with disabilities; (ii) documentation that the requirement for including specified demonstrated competencies in G.S. 115C-296(b) is being met; and (iii) identification of changes needed in teacher education programs to better prepare teachers to teach students with disabilities, and a timeline for the implementation of the changes."

Session Laws 2007-295, s. 1, provides: "The Department of Public Instruction shall identify the various models being utilized to deliver educational and other services at the high school level to children with disabilities in North Carolina. As a part of its study, the Department shall consider the efficacy of the models currently being used in the State and review the research for best practice models that are being implemented in other states. The Department shall report its findings and any recommended legislation or policy changes by March 1, 2008, to the Joint Legislative Education Oversight Committee."

Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Session Laws 2008-174, s. 1, provides: "The State Board of Education and Department of Health and Human Services shall jointly meet and make a determination as to which public agency is responsible for providing special education and related services as required under Article 9 of Chapter 115C of the General Statutes and the federal Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 144, et seq., (2004), as amended, for children with disabilities who are placed in private psychiatric residential treatment facilities by a public agency other than the local educational agency. The State Board of Education and Department of Health and Human Services shall report the determination and any recommended legislation or policy changes by January 1, 2009, to the Joint Legislative Education Oversight Committee and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services."

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-106.*

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under former G.S. 115C-106 (repealed) et seq. failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Section requires more than federal law. — North Carolina apparently requires more than the Education of the Handicapped Act (EHA), 20 U.S.C. § 1400 to 1425. The special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Statute Did Not Apply to Federally-Run School. — North Carolina standard of a free appropriate public education (FAPE) under former G.S. 115C-106(a) (repealed) did not apply to the autistic student's action against the school located on an air force base because the school was federally-run, and therefore, the FAPE standard under 20 U.S.C.S. § 1401(a)(18)(B) applied. G. v. Fort Bragg Dependent Schs., 324 F.3d 240, 2003 U.S. App. LEXIS 5759 (4th Cir. 2003).

In an action against the Fort Bragg Dependent Schools under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., the federal standard embodied in the IDEA, rather than North Carolina's "full potential " standard under former G.S. 115C-106(a) (repealed), governed the Individualized Educational Program of an autistic student in the Fort Bragg Dependent Schools; there was no clear expression of Congressional intent to subject federal entities to state free appropriate public education standards referred to in 20 U.S.C.S. § 1401(a)(18)(B) in providing education under the IDEA.

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-106.*

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-114 (repealed) and former 115C-116 (repealed) and this section to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-106.2. Purposes.

(a) The purposes of this Article are to (i) ensure that all children with disabilities ages three through 21 who reside in this State have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (ii) ensure that the rights of these children and their parents are protected; and (iii) enable the State Board of Education and local educational agencies to provide for the education of all children with disabilities.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

(c) Notwithstanding any other section of this Article, the State Board of Education may set standards for the education of children with disabilities that are higher than those required by IDEA. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5; 1977, c. 927, ss. 1, 2; 1979, 2nd Sess., c. 1295; 1981, c. 423, s. 1; 1997-443, s. 11A.47; 2006-69, s. 2; 2007-292, s. 2.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-106.*

Equal Opportunity to Learn is All That is Required. — In North Carolina the special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. This standard does not require a school district to develop a "utopian educational program " for the student with special needs any more so than would be required if the student were not handicapped. CM ex rel. JM v. Board of Educ., 85 F. Supp. 2d 574, 1999 U.S. Dist. LEXIS 21334 (W.D.N.C. 1999), aff'd in part, rev'd in part on other grounds, and remanded, 241 F.3d 374 (4th Cir. N.C. 2001).

This section was not designed to require the development of a utopian educational program for handicapped students any more than the public schools are required to provide utopian educational programs for nonhandicapped students. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687, cert. denied and appeal dismissed, 306 N.C. 740, 295 S.E.2d 759 (1982), decided under former § 115-363.

The General Assembly intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible. Under this standard a handicapped child should be given an opportunity to achieve his full potential commensurate with that given other children. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687, cert. denied and appeal dismissed, 306 N.C. 740, 295 S.E.2d 759 (1982), decided under former § 115-363.

Section requires more than federal law. — North Carolina apparently requires more than the Education of the Handicapped Act (EHA), 20 U.S.C. § 1400 to 1425. The special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Statute Did Not Apply to Federally-Run School. — North Carolina standard of a free appropriate public education (FAPE) under former G.S. 115C-106(a) (repealed) did not apply to the autistic student's action against the school located on an air force base because the school was federally-run, and therefore, the FAPE standard under 20 U.S.C.S. § 1401(a)(18)(B) applied. G. v. Fort Bragg Dependent Schs., 324 F.3d 240, 2003 U.S. App. LEXIS 5759 (4th Cir. 2003).

In an action against the Fort Bragg Dependent Schools under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., the federal standard embodied in the IDEA, rather than North Carolina's "full potential " standard under former G.S. 115C-106(a) (repealed), governed the Individualized Educational Program of an autistic student in the Fort Bragg Dependent Schools; there was no clear expression of Congressional intent to subject federal entities to state free appropriate public education standards referred to in 20 U.S.C.S. § 1401(a)(18)(B) in providing education under the IDEA. G v. Fort Bragg Dependent Schs., 343 F.3d 295, 2003 U.S. App. LEXIS 17294 (4th Cir. 2003).

Failure of county and State boards to provide free appropriate public education to child who suffered from dyslexia was a violation of this section and the parallel federal statute, the Education for All Handicapped Children Act, 20 U.S.C. § 1400 to 1420. Hall v. Vance County Bd. of Educ., 774 F.2d 629 (4th Cir. 1985).

Noncustodial Parent Ordered to Pay Child's Special Educational Expenses Even Though Custodial Parent Failed to Seek Available Public Funding. — Although public funding may have been available for special education needs of child, but was not sought by custodial parent, court did not err in requiring noncustodial parent to pay costs of child's educational expenses in proportion to parent's gross income. Sikes v. Sikes, 98 N.C. App. 610, 391 S.E.2d 855 (1990), aff'd, 330 N.C. 595, 411 S.E.2d 588 (1992).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-106.*

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by the Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, — N.C.A.G. — (October 3, 1990).

§ 115C-106.3. Definitions.

The following definitions apply in this Article:

(1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.

(2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.

(3) "Dispute" means a disagreement between the parties.

(3a) "Educational services" means all of the following:

a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and State law. The instruction shall be delivered by an appropriately qualified teacher to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.

b. Related services included in the child's IEP.

c. Behavior intervention services to the extent required by federal law.

(4) "Free appropriate public education" means special education and related services that:

a. Are provided at public expense, under public supervision and direction, and without charge;

b. Meet the standards of the State Board;

c. Include an appropriate preschool, elementary school, or secondary school education in the State; and

d. Are provided in conformity with an individualized education program.

(5) "Hearing officers" include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.

(5a) "Homebound instruction" means educational services provided to a student outside the school setting.

(6) "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.

(7) "IEP Team" is as defined in IDEA.

(8) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.

(9) "Infant or toddler with a disability" is as defined in IDEA.

(10) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(11) "Local educational agency" includes any of the following that provides special education and related services to children with disabilities:
  a. A local school administrative unit.
  b. A charter school.
  c. The Department of Health and Human Services.
  d. The Department of Correction.
  e. The Department of Juvenile Justice and Delinquency Prevention.
  f. Any other State agency or unit of local government.

(12) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(13) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a dispute.

(14) "Parent" means:
  a. A natural, adoptive, or foster parent;
  b. A guardian, but not the State if the child is a ward of the State;
  c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
  d. An individual who is legally responsible for the child's welfare; or
  e. A surrogate if one is appointed under G.S. 115C-109.2.

(15) "Party" or "Parties" means the local educational agency or the parents, or both.

(16) "Petition" means a request for a due process hearing as provided for under IDEA.

(17) "Preschool child with a disability" means a child with one or more disabilities who meets all of the following criteria:
  a. Has reached his or her third birthday and whose parents have requested services from the public schools.
  b. Is not eligible to enroll in public kindergarten.
  c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.

(18) "Related services" is as defined in IDEA.

(18a) "Residence" or "reside" means the place where a child with a disability is entitled to be enrolled in a North Carolina public school under G.S. 115C-366 except for the age requirements of that section. This definition shall not apply to children with disabilities who were (i) enrolled in a particular local school administrative unit on the last day of school for the 2006-2007 school year, or (ii) enrolled in and attending a school in a particular local school administrative unit on August 1, 2007, for the 2007-2008 school year for as long as they live within and are continuously enrolled in that local school administrative unit.

(19) "Rules" includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.

(20) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The

term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 23, 24; 1985, c. 479, s. 26(a);1985, c. 780, ss. 3, 4; 1989(Reg. Sess., 1990), c. 1003, s. 5; 1996, 2nd Ex. Sess., ch. 18, s. 18.24(b); 2006-69, s. 2; 2007-292, s. 1; 2007-429, s. 1; 2008-90, s. 1.)

Effect of Amendments. — Session Laws 2008-90, s. 1, effective July 11, 2008, substituted "to the extent required by federal law" for "designed to address the behavior violation that caused the disciplinary change of placement in order to prevent a recurrence" in subdivision (3a)c.

Legal Periodicals. — For essay, "Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference, " see 1991 Duke L.J. 166.

CASE NOTES

Editor's Note. — The cases cited below were decided under former G.S. 115C-108.

Education and Habilitation Services Distinguished. — North Carolina law recognizes the difference between special education services and habilitation services. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Requested Services Held Not Required by Law. — In-home services sought by parents of 19-year-old autistic and moderately mentally handicapped child were not the kind of services which must be provided, under federal or North Carolina law, by the local education agency. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — The opinions cited below were decided under former G.S. 115C-108.

Educational programs operated by public schools for three- and four-year-old children are not subject to licensure and regulation by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Educational programs for three- and four-year-old children housed in public school buildings but operated by private providers are subject to licensure and regulations by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

State is not prohibited from purchasing day care services from day care programs operated by public schools, even though those programs are not licensed by Child Day Care Commission. See opinion of Attorney General to Mr. Harry E. Wilson, Legal Specialist, North Carolina Department of Public Instruction, 60 N.C.A.G. 36 (1990).

Sharing of Educational Records. — This section, G.S. 115C-110(a) (repealed) and 115C-403(b) represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-107: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-107 was formerly codified in Part 1 of this Article.

Part 1B. Provision of Free Appropriate Public Education.

§ 115C-107.1. Free appropriate public education; ages.

(a) A free appropriate public education shall be made available to the following:

(1) All children with disabilities who reside in the State, who are the ages of three through 21, who have not graduated from high school, and who require special education and related services.

(2) Any child with a disability who is receiving special education and related services and who has not graduated from high school until the end of the school year in which that child reaches the age of 22.

(3) Children with disabilities who require special education and related services and who are suspended or expelled from school and entitled to continuing education services as provided in IDEA.

(b) A free appropriate public education is not required to be provided to infants and toddlers with disabilities. However, early intervention services shall be made available to these children under G.S. 143B-139.6A.

(c) If funds are made available, the State Board and the Secretary of Health and Human Services may adopt an agreement to allow the continuation of early intervention services for children with a disability who are at least three years old but before they enter kindergarten or are eligible to enter kindergarten. If an agreement is adopted under this subsection, then a free appropriate public education is not required to be provided to any child with a disability who continues to receive early intervention services in accordance with that agreement.

(d) Nothing in this Article requires a free appropriate public education to be made available to any individual aged 18 through 21 who, in the educational placement immediately before that individual's incarceration in an adult correctional facility, was not actually identified as being a child with a disability and did not have an IEP. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1003, s. 5; 1997-443, s. 11A.118(a); 1998-202, s. 4(h); 2000-137, s. 4(k); 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

Legal Periodicals. — For essay, "Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference, " see 1991 Duke L.J. 166."

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-111 and G.S. 115C-113.*

Failure of county and State boards to provide free appropriate public education to child who suffered from dyslexia was a violation of this section and the parallel federal statute, the Education for All Handicapped Children Act, 20 U.S.C. § 1400 to 1420. Hall v. Vance County Bd. of Educ., 774 F.2d 629 (4th Cir. 1985).

Special Education and Habilitation Services Distinguished. — North Carolina law recognizes the difference between special education services and habilitation services. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Requested Services Held Not Required by Law. — In-home services sought by parents of 19-year-old autistic and moderately mentally handicapped child were not the kind of services which must be provided, under federal or North

Carolina law, by the local education agency. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

§ 115C-107.2. Duties of State Board of Education.

(a) The State Board of Education shall adopt rules to ensure that:

(1) The requirements of this Article and IDEA are met.

(2) All educational programs under the supervision of any local educational agency for children with disabilities meet all of the following requirements:

a. The programs are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities.

b. The programs meet the State Board's educational standards.

c. With respect to homeless children, the programs meet the requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless Assistance Act.

(b) The rules adopted under subsection (a) of this section shall include rules that:

(1) Establish standards for the programs of special education to be administered by local educational agencies and by the State Board.

(2) Ensure that children with disabilities are educated in the least restrictive environment.

(3) Ensure that local school administrative units make available special education and related services to all preschool children with disabilities whose parents request these services.

(4) Provide for public hearings, adequate notice of these hearings, and an opportunity for comment from the general public before the adoption of the rules required by this Article.

(5) Are required in order to receive federal funding under IDEA.

(6) Provide that, where a local educational agency finds that appropriate services are available from other public agencies or private organizations, the local educational agency may contract for those services rather than provide them directly.

(7) Enable local educational agencies to identify, evaluate, place, and make other educational decisions for children with disabilities.

(8) Provide procedural safeguards for children with disabilities and their parents.

(9) Designate a person in the Department of Public Instruction who is charged with receiving and responding to notices or other legal documents under Part 1D of this Article.

(10) Support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(c) Rules adopted under this section shall be consistent with IDEA and shall comply with G.S. 115C-12(19). Local educational agencies, parents, and other individuals concerned with the education of children with disabilities shall be consulted in the development of rules adopted under this Article.

(d) The State Board shall develop forms for local educational agencies to use in order to comply with this Article. The forms must comply with G.S. 115C-12(19) and may be in an electronic format.

(e) The State Board shall provide technical assistance to local educational agencies at their request.

(f) The State Board shall develop any plans that meet the criteria of IDEA and are required to be submitted to the United States Department of Education.

(g) The State Board shall make available to hearing officers training related to IDEA and its legal interpretations in order to facilitate hearings and reviews under G.S. 115C-109.6. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1989 (Reg. Sess., 1990), c. 1003, s. 5; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-113.*

Obligation to Develop IEP. — School system had a legal obligation to fully develop an individualized educational program (IEP) for child following her release from the The Whitaker School, to present the IEP to petitioner upon petitioner's request, and to present school system's proposals in writing to petitioner, regardless of petitioner's request. Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339, cert. denied, 336 N.C. 602, 447 S.E.2d 384, 513 U.S. 989, 115 S. Ct. 486, 130 L. Ed. 2d 398 (1994).

Evaluation and Diagnosis. — Once a child has been referred for a diagnosis and evaluation, the local educational agency shall, "as soon as possible after receiving consent for evaluation " provide or cause to be provided a diagnosis and evaluation of the child. Beaufort County Schs. v. Roach, 114 N.C. App. 330, 443 S.E.2d 339, cert. denied, 336 N.C. 602, 447 S.E.2d 384, 513 U.S. 989, 115 S. Ct. 486, 130 L. Ed. 2d 398 (1994).

§ 115C-107.3. Child find.

(a) The Board shall require an annual census of all children with disabilities residing in the State, subdivided for "identified" and "suspected" children with disabilities, to be taken in each school year. Suspected children are those in the formal process of being evaluated or identified as children with disabilities. The census shall be conducted annually and shall be completed by October 15, submitted to the Governor and General Assembly and made available to the public by January 15 annually.

(b) In taking the census, the Board requires the cooperation, participation, and assistance of all local educational agencies. Therefore, each local educational agency shall cooperate and participate with and assist the Board in conducting the census.

(c) The census shall include the number of children identified and suspected with disabilities, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what local educational agency, the identity of each local educational agency having children with disabilities in its care, custody, management, jurisdiction, control, or programs, the number of children with disabilities being served by each local educational agency, and any other information or data that the Board requires. The census shall be of children with disabilities between the ages three through 21 but is not required to include children with disabilities that have graduated from high school. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2; 2007-292, s. 3.)

§ 115C-107.4. Monitoring and enforcement.

(a) The State Board shall monitor all local educational agencies to determine compliance with this Article and IDEA. The State Board also shall monitor the effectiveness of IEPs in meeting the educational needs of children with disabilities.

(b) The State Board shall implement an effective and efficient system of incentives and sanctions for local educational agencies in order to improve results for children with disabilities and meet the requirements of this Article and IDEA. The system, which must be based on a continuum of recognition and sanctions, shall:

(1) Identify and recognize local educational agencies that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each local educational agency.

(2) Provide consequences for local educational agencies that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.

(c) The system of incentives developed under subsection (b) of this section may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(d) The system of sanctions developed under subsection (b) of this section shall include the following:

(1) Level One — Needs Assistance: When the State Board determines (i) a local school educational agency has been in noncompliance for two years and (ii) that agency needs assistance in implementing the requirements of this Article and IDEA, the State Board shall take one or more of the following actions:
   a. The Board may direct the local educational agency to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.
   b. The Board may impose special conditions on that agency's application for IDEA funds and receipt of State funds.
   c. The Board may direct how that local educational agency utilizes IDEA and State funds to address the remaining findings of noncompliance. The local educational agency must track the use of these funds to show how the funds are targeted to address areas of noncompliance.

(2) Level Two — Needs Intervention: If the State Board determines (i) that the local educational agency has been in noncompliance for three years and (ii) that agency needs assistance in implementing this Article and IDEA, the following apply:
   a. The Board may take any of the actions described in subdivision (1) of this subsection.
   b. The Board shall withhold, in whole or in part, any further payments of IDEA and State funds to the agency.
   c. The Board shall require the agency to enter into a compliance agreement.

(3) Level Three — Needs Substantial Intervention: In addition to the sanctions described in subdivisions (1) and (2) of this subsection, if at any time the State Board determines a local educational agency (i) needs substantial intervention in implementing the requirements of this Article and IDEA, or (ii) has established a substantial failure to comply with this Article and IDEA, the Board shall take one or more of the following actions:
   a. The Board shall direct the agency to implement a compliance agreement, billed to that agency.
   b. The Board shall recover IDEA and State funds.
   c. The Board shall refer the agency for appropriate enforcement under State or federal law.

(e) In addition to the consequences required under subsections (b) and (d) of this section, the State Board shall develop sanctions for local educational agencies that fail to implement a corrective action or hearing decision. (1977,

c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

§ 115C-107.5. Annual reports.

The State Board shall report annually to the Joint Legislative Education Oversight Committee on the implementation of this Article and the educational performance of children with disabilities. Each annual report shall include a copy of the following documents that were submitted, received, or made public during the year: (i) the most recent State performance plan and any amendments to that plan submitted to the Secretary of Education, (ii) compliance and monitoring reports submitted to the Secretary of Education, (iii) the annual report submitted to the Secretary of Education on the performance of the State under its performance plan, and (iv) any other information required under IDEA to be made available to the public. In addition, the annual report shall include an analysis of the educational performance of children with disabilities in the State and a summary of disputes under Part 1D of this Chapter. The report shall be filed no later than October 15 each year and may be filed electronically. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2.)

§ 115C-107.6. Duties of local educational agencies.

(a) Each local educational agency, in providing for the education of children with disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the State Board under this Article. In addition, each local educational agency shall have in effect policies, procedures, and programs that are consistent with this Article, IDEA, and rules adopted by the State Board.

(b) No child with disabilities shall be prevented from attending the public schools of the local educational agency in which the child resides or from which the child receives services or from attending any other public program of free appropriate public education based solely on the fact that the child has a disability. If it appears the child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the local school administrative unit shall confer with the appropriate Department of Health and Human Services or Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in that program and development of the child's individualized education program.

(c) No matriculation or tuition fees or other fees or charges shall be required or asked of children with disabilities or their parents except those fees or charges that are required uniformly of all public school pupils. The provision of a free appropriate public education within the facilities of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention may not prevent that Department from charging for other services or treatment.

(d) Each child with a disability shall be educated in accordance with that child's IEP and in the least restrictive environment for that child.

(e) Each local educational agency may use the forms developed under G.S. 115C-107.2(d). (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d); 1997-443, s. 11A.118(a); 1998-202, s. 4(g); 2000-137, s. 4(j); 2006-69, s. 2; 2007-292, s. 4.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-110.*

Applicability. — When a more generally applicable statute such as G.S. 115C-366(a) conflicts with a more specific, special statute such as this section, the special statute is viewed as an exception to the provisions of the general statute. Accordingly, the specific requirements of subsection (i) of this section control where they are in conflict with the general requirements of G.S. 115C-336(a). Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Responsible Authority. — Under former G.S. 115C-110(i) (repealed), neither the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services nor the Department of Health and Human Services was the agency responsible for plaintiff student's educational placement or the provision of free appropriate public education, and letters from those agencies changed only the support services they provided; thus, persons outside the individualized educational programs process had not unilaterally changed the student's educational placement without following the procedures set forth by the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Standing to Raise Issue of Which Governmental Body to Pay Tuition. — The parents of a child with special educational needs failed to establish that their child was about to be denied continuance in a program appropriate to her special needs and did not have standing to raise the issue of whether the county board of education or the Department of Human Resources was responsible for tuition expenses of their child at a private school for handicapped children to which their child had been assigned by the county school system, since the private school had remained in operation at all times prior to and during the action. Linder v. Wake County Bd. of Educ., 50 N.C. App. 378, 273 S.E.2d 735 (1981).

Place of Actual Abode Determinative of Education Entitlement. — Where child's place of actual abode was clearly in county where he lived with his grandmother, he was a legal resident of the county so long as he continued to live there and was thus entitled to a free appropriate education in this county. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under former G.S. 115C-110(a) (repealed) failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions cited below were decided under former G.S. 115C-110.*

Sharing of Educational Records. — Sections 115C-109 (repealed), 115C-403(b) and subsection (a) of this section represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The effect of subsection (a) is to make the various divisions and agencies of the Department of Human Resources engaged in providing educational opportunities to school age children with "special needs " the functional equivalent of a local school administrative unit. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The selection of the LEA Representative required to be part of the IEP Team, under special education law and regulations, is ultimately a matter of local discretion, although such discretion must of course be exercised consistent with the potential role of the LEA Representative on any particular child's IEP Team. Such informed exercise of local discretion, on a case-by-case basis, is completely congruent with the goals of the IDEA. See opinion of Attorney General to Brad Sneeden Deputy Superintendent N. C. Department of Public Instruction, 1998 N.C.A.G. 50 (12/1/98).

§ 115C-107.7. Discipline and homebound instruction.

(a) The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

(b) If a change of placement occurs under the discipline regulations of IDEA, a local educational agency shall not assign a student to homebound instruction without a determination by the student's IEP team that the homebound instruction is the least restrictive alternative environment for that student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the continued appropriateness of the homebound instruction shall be evaluated monthly by the designee or designees of the student's IEP team.

(c) **(Expires March 1, 2011 — see notes)** A local educational agency shall be deemed to have a "basis of knowledge" that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly establishes the need for special education. Prior disciplinary infractions shall not, standing alone, constitute clear and convincing evidence. (2006-69, s. 2; 2007-425, s. 1; 2008-90, ss. 2, 3.)

Editor's Note. — Session Laws 2008-90, s. 4 provides: "The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2011, on the number of contested cases that are filed based on Section 3 of this act [which enacted G.S. 115C-107.7(c)] and the disposition of those contested cases."

Session Laws 2008-90, s. 5, provided that subsection (c) of this section is effective January 1, 2009, and expires March 1, 2011.

Effect of Amendments. — Session Laws 2008-90, s. 2, effective July 11, 2008, substituted "designee or designees of the student's IEP team" for "head of the student's IEP team" in the last sentence of subsection (b).

Session Laws 2008-90, s. 3, effective January 1, 2009, and expiring March 1, 2011, added subsection (c).

§ 115C-108: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-108 was formerly codified in Part 1 of this Article.

Part 1C. Interagency Coordination.

§ 115C-108.1. State Board lead agency.

(a) The Board shall cause all local educational agencies to provide special education and related services to children with disabilities in their care, custody, management, jurisdiction, control, or programs.

(b) The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with disabilities extends to and over the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

(c) All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies; all duties, responsibilities, rights, and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies. However, with respect to children with disabilities who are residents or patients of any State-operated or State-supported residential treatment facility, including a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, or any of their divisions and agencies, the Board may contract with the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise, and approve any plans for special education and related services to those residents.

(d) The Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with disabilities in their care, custody, or control. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on that department and when other procedural due process requirements, substantially equivalent to those required under this Article and IDEA, are assured in programs of special education and related services furnished to children with disabilities served by that department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

(e) The Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local school administrative units and the programs and agencies of the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-108.2. Interlocal cooperation.

The Board, any two or more local educational agencies, and any other agency and any State department, agency, or division having responsibility for the education, treatment, or habilitation of children with disabilities may enter into interlocal cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment, or habilitation of these children within the jurisdiction of the agency or unit, and shall do so when it is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are educationally appropriate to the children with disabilities for whose benefit the undertaking is made and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 4(m); 2000-137, s. 4(p); 2006-69, s. 2.)

§ 115C-109: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-109 was formerly codified in Part 1 of this Article.

Part 1D. Procedural Safeguards.

§ 115C-109.1. Handbook for parents.

The State Board of Education shall make available to parents a handbook of procedural safeguards. This handbook for parents shall be made available at least once each school year, except that a copy also shall be given to the parent (i) upon the initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv) upon any revision to the content of the handbook. This handbook for parents shall include a full explanation of the procedural safeguards under this Article and IDEA, be written in the native language of the parent unless it clearly is not feasible to do so, be written in an easily understood manner, and include information required under IDEA to be included.

The State Board shall place a current copy of the handbook for parents on its Internet Web site. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-109.2. Adult children with disabilities; surrogate parents.

(a) When a child with a disability reaches the age of 18, all of the following apply:

(1) Notices required under this Article shall be provided to both the child and the child's parent.

(2) All other rights accorded to parents under this Article and IDEA transfer to the child.

(3) The local educational agency shall notify the child and the child's parent of these transfer rights.

(b) Notwithstanding subsection (a) of this section, for a child with a disability who has reached the age of majority under State law and who has not been determined to be incompetent but is determined to not have the ability to provide informed consent with respect to his or her education program, the State Board shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility under this section.

(c) A reasonable effort must be made to appoint a surrogate for a child with a disability within 30 days of a determination that one of the following conditions exists and that the child needs a surrogate:

(1) The parents of that child are not known;

(2) The parents, after reasonable efforts, cannot be located; or

(3) The child is a ward of the State.

(d) A person must be eligible under IDEA to be appointed as a child's surrogate. (1987 (Reg. Sess., 1988), c. 1079, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(j); 2000-137, s. 4(m); 2006-69, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-116.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Access to Records. — As a part of the appeal proceedings, it is required that the parents of the child involved be granted access to medical and mental health records which were considered in the child's educational program placement, assignment or denial thereof. See opinion of Attorney General to Dr. Lenore Behar, 44 N.C.A.G. 231 (1975), rendered under former Chapter 115.

§ 115C-109.3. Access to records; opportunity for parents to participate in meetings.

(a) Each local educational agency shall provide an opportunity for the parents of a child with a disability to examine all records relating to that child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.

(b) Local educational agencies may release the records of a child with a disability only as permitted under State or federal law. The parents of a child with a disability may have access to the child's records and may read, inspect, and copy all and any records, data, and information maintained by a local educational agency with respect to that child. Parents, upon their request, are entitled to have those records, data, and information fully explained, interpreted, and analyzed for them by the staff of the agency, unless specifically prohibited by court order. If a request is made under this subsection, the local educational agency shall honor the request within not more than 45 days after it is made or in time for the individual who made the request to prepare for a meeting under subsection (a) of this section, whichever is sooner.

(c) The student and the student's parents may add written explanations or clarifications to the records, data, and information and may request the expunction of incorrect, outdated, misleading, or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having been asked to do so by the parent, the parent may appeal that decision under G.S. 115C-45(c)(2). (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-114.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-106 (repealed) and former 115C-116 (repealed) and this section to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, former G.S. 115C-116(c) (repealed) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Transmittal of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS), and other Department of Human Resources (DHR) agencies providing educational services to school age children, any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Access to records. — As a part of the appeal proceedings, it is required that the parents of the child involved be granted access to medical and mental health records which were considered in the child's educational program placement, assignment or denial thereof. See opinion of Attorney General to Dr. Lenore Behar, 44 N.C.A.G. 231 (1975), rendered under former Chapter 115.

§ 115C-109.4. Mediation.

(a) It is the policy of this State to encourage local educational agencies and parents to seek mediation involving any dispute under this Article, including matters arising before or after filing a petition under G.S. 115C-109.6.

(b) Mediation under this section must meet the following requirements:

(1) The mediation must be voluntary on the part of both parties.

(2) Mediation shall not be used to deny or delay a parent's right to an impartial hearing under G.S. 115C-109.6, or to deny any other rights afforded under this Article or IDEA.

(3) The mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The State Board may establish procedures to offer to parties that do not choose to use the mediation process an opportunity to meet with a disinterested party, as provided under IDEA, who can encourage the use and explain the benefits of the mediation process to the parties. This meeting must be at a time and location convenient to the parents.

(d) The State Board shall maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. When mediation is requested, the Exceptional Children Division of the Department of Public Instruction shall assign a mediator from this list of mediators.

(e) The State shall bear the cost of the mediation process, including the costs of meetings described under subsection (c) of this section, unless the parties opt to select a mediator other than the mediator assigned under subsection (d) of this section or if the parties opt to use an alternative method of dispute resolution.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(g) Evidence of statements made and conduct occurring in a mediation are confidential, are not subject to discovery, and are inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.

(h) When resolution is reached to resolve the dispute through the mediation process, the parties shall execute a legally binding agreement that:

(1) Sets forth the agreement.

(2) States that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent impartial hearing under G.S. 115C-109.6 or in any civil proceeding.

(3) Is signed by both the parent and a representative of the local educational agency who has the authority to bind that agency.

(4) Is enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States.

(i) In addition to mediation as provided by this section, the parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1. In addition, the parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal administrative review is filed, to the extent permitted under State and federal law. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-116.*

Construction with Other Laws. — The court held that the 60-day limitations period in G.S. 150B-23 is the period associated with this section, and rejected the idea that North Carolina's catch-all three-year statute of limitations for statutory actions for which no limitations period is otherwise provided, pursuant to G.S. 1-52(2), constituted a better borrowing choice and one more consistent with federal policies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions cited below were decided under former G.S. 115C-116.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.5. Prior written notice.

(a) The local educational agency shall provide prompt written notice to parents whenever that agency proposes to initiate or change, or refuses to initiate or change (i) the identification, evaluation, or educational placement of a child, or (ii) the provision of a free appropriate public education to a child with a disability. The local educational agency shall document that all required notices have been sent to and received by parents.

(b) This prior written notice shall be in the native language of the parents, unless it clearly is not feasible to translate it, and shall contain all of the following information:

(1) A description of the action proposed or refused by the local educational agency.

(2) An explanation of why the local educational agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report that agency used as a basis for the proposed or refused action.

(3) A statement that the parent of a child with a disability has protection under the procedural safeguards of this Article and IDEA and, if this notice is not the initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.

(4) Sources for parents to contact to obtain assistance in understanding this Article and IDEA.

(5) A description of other options considered by the IEP Team and the reason why those options were rejected.

(6) A description of the factors that are relevant to the local agency's proposal or refusal.

(7) Any other information required to be included under IDEA. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-116.*

Construction with Other Laws. — The court held that the 60-day limitations period in G.S. 150B-23 is the period associated with this section, and rejected the idea that North Carolina's catch-all three-year statute of limitations for statutory actions for which no limitations period is otherwise provided, pursuant to G.S. 1-52(2), constituted a better borrowing choice and one more consistent with federal policies. CM v. Board of Educ., 241 F.3d 374, 2001 U.S. App. LEXIS 2555 (4th Cir. 2001), cert. denied, 534 U.S. 818, 122 S. Ct. 48, 151 L. Ed. 2d 18 (2001).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-116.*

Scope of Obligations of Surrogate Parent. — The General Assembly intended that the obligations of a surrogate parent have the scope specified by federal law. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

Representation of Parentless Child's Educational Interests. — In those situations where the parents of a handicapped child are unavailable or unknown and the child is a ward of the State, the responsibility and authority for representing that child's educational interests rests with a surrogate parent, and not with the county director of social services. Further, subsection (c) and 20 U.S.C. § 1415(b)(1)(B) prohibit the county director of social services or any employee of a department of social services involved in the education or care of such child from serving as a surrogate parent in such circumstances. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.6. Impartial due process hearings.

(a) Any party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination. The party filing the petition must notify the other party and the person designated under G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

(b) Notwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition. The issues for review under this section are limited to those set forth in subsection (a) of this section. The party requesting the hearing may not raise issues that were not raised in the petition unless the other party agrees otherwise.

(c) The one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent.

(d) The hearing shall be conducted in the county where the child attends school or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a different venue.

(e) The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public.

(f) Subject to G.S. 115C-109.7, the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Following the hearing, the administrative law judge shall issue a written decision regarding the issues set forth in subsection (a) of this section. The decision shall contain findings of fact and conclusions of law. Notwithstanding Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and is not subject to further review unless appealed to the Review Officer under G.S. 115C-109.9.

(g) A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitation period for appeal as set forth in G.S. 115C-109.9.

(h) In addition to the petition, the parties shall simultaneously serve a copy of all pleadings, agreements, and motions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall simultaneously serve a copy of all orders and decisions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9).

(i) Nothing in this section shall be construed to preclude a parent from filing a separate due process petition on an issue separate from a petition already filed.

(j) The State Board, through the Exceptional Children Division, and the State Office of Administrative Hearings shall develop and enter into a binding memorandum of understanding to ensure compliance with the statutory and regulatory procedures and timelines applicable under IDEA to due process hearings and to hearing officers' decisions, and to ensure the parties' due process rights to a fair and impartial hearing. This memorandum of understanding shall be amended if subsequent changes to IDEA are made. The procedures and timelines shall be made part of the Board's procedural safeguards that are made available to parents and the public under G.S. 115C-109.1 and G.S. 115C-109.5. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

Editor's Note. — Session Laws 2006-69, s. 6(a), (b) provides: "(a) The State Board of Education, through the Division of Exceptional Children and the Office of Administrative Hearings, shall develop its memorandum of understanding as required under G.S. 115C-109.6(j), as created in Section 2 of this act, by October 31, 2006. The memorandum of understanding shall establish procedures and timelines that are efficient and meet the criteria of IDEA so that impartial hearings are expeditiously handled. At the same time, the procedures and timelines should recognize there are some complicated issues that may require additional time to resolve. In particular, this memorandum should address at least the following:

"(1) The reasons, number of days, and means for providing notice to parties.

"(2) When a petition is initiated for the purpose of determining when a decision shall be reached. Specifically, this shall address when mediation is begun before and after a petition is filed and when no mediation is begun.

"(3) Whether mediated conferences subject to Chapter 150B of the General Statutes are appropriate under IDEA and, if so, when they should occur and how they will affect the timelines.

"(4) The number of extensions to be allowed and the basis on which an extension may be granted.

"(5) The standard of review for cases going to review officers.

"(6) Any other procedural or tolling issue that the State Board of Education or the Office of Administrative Hearings considers necessary to address.

"(b) The State Board and the Office of Administrative Hearings shall report jointly to the House Select Committee on the Education of Students with Disabilities by November 15, 2006, on the memorandum of understanding. This report shall make any recommendations as to funding issues that must be resolved or statutory changes that are needed, or both, in order to implement the memorandum of understanding."

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 115C-116.*

Federal Interpretation Controlling. — To the extent that North Carolina's interpretation of the authority of a hearing officer is a material variation from the federal district court's interpretation of 20 U.S.C. § 1415(b)(1)(E), the federal version must control, because it sets forth the minimum procedural safeguards intended by Congress to be followed by State and local agencies receiving federal assistance when making educational placement for handicapped children. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

Administrative Hearing and Decision

Required. — The procedural safeguards embodied in G.S. 1415(b)(1)(E) of the Education for All Handicapped Children Act (EAHCA), 20 U.S.C. § 1401 et seq., required defendant's city board of education and hearing officer to conduct an administrative hearing and render a decision in that hearing on plaintiffs' claim for tuition reimbursement. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

Failure to Follow Time Limitations. — Plaintiffs who did not file a petition for a contested case under this section within the time limit prescribed by G.S. 150B-23, abandoned the process and sought relief in the courts without exhausting the available administrative remedies; therefore, they were barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions cited below were decided under former G.S. 115C-116.*

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-106 (repealed), 115C-114 (repealed), and former 115C-116 (repealed) to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.7. Resolution session.

(a) Within 15 days of receiving notice of the parent's petition filed under G.S. 115C-109.6 and before the opportunity for an impartial hearing, the local educational agency shall convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the petition. This meeting shall include a representative of the agency who has decision-making authority on behalf of that agency and may not include an attorney of the local educational agency unless the parent is accompanied by an attorney. If the parent plans to be accompanied by an attorney under this section, the parent must give prior written notice of this fact to the agency. The purposes of the meeting are (i) for the parent to have an opportunity to discuss the petition and the facts that form the basis of the petition and (ii) for the local educational agency to have the opportunity to resolve the dispute.

(b) The parent and the local educational agency jointly may agree in writing to waive the meeting under subsection (a) of this section or to use the mediation process described in G.S. 115C-109.4.

(c) If the local educational agency does not resolve the dispute to the satisfaction of the parents within 30 days of the agency's receipt of the petition, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

(d) If a resolution is reached to resolve the dispute at a meeting under subsection (a) of this section, the parties shall execute a legally binding agreement that is:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency;

(2) Enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States; and

(3) Filed with the person designated by the State Board to receive notices and with the Office of Administrative Hearings.

(e) If the parties execute an agreement under subsection (d) of this section, either party may void the agreement by providing written notice within three business days of the agreement's execution to the person designated by the State Board to receive notices, the Office of Administrative Hearings, and the other party. Notwithstanding subsection (c) of this section, upon receipt of this notice, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983, ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2; 1983, c. 247, s. 6; 1985, c. 412, s. 2; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1079, s. 1; 1989, c. 362; 1989 (Reg. Sess., 1990), c. 1058; 1991, c. 540, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 27; 1993, c. 270, s. 1; 1997-115, s. 1; 2006-69, s. 2.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-116.*

Federal district court properly followed federal procedural law in reviewing independently both federal and State law special education claims. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990).

Failure to Follow Time Limitations. — Plaintiffs who did not file a petition for a contested case under this section within the time limit prescribed by G.S. 150B-23, abandoned the process and sought relief in the courts without exhausting the available administrative remedies; therefore, they were barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

§ 115C-109.8. Procedural issues.

(a) In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits.

(b) A hearing officer may order a local educational agency to comply with procedural requirements under this Article and IDEA. (2006-69, s. 2.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 115C-116.*

Federal Interpretation Controlling. — To the extent that North Carolina's interpretation of the authority of a hearing officer is a material variation from the federal district court's interpretation of 20 U.S.C. § 1415(b)(1)(E), the federal version must control, because it sets forth the minimum procedural safeguards intended by Congress to be followed by State and local agencies receiving federal assistance when making educational placement for handicapped children. S-1 ex rel. P-1 v. Spangler, 650 F. Supp. 1427 (M.D.N.C. 1986), vacated, 832 F.2d 294 (4th Cir. 1987).

OPINIONS OF ATTORNEY GENERAL

How Conflict with Federal Law Resolved. — Section 7A-647(2)c [see now G.S. 7B-903, 7B-2502, 7B-2503, 7B-2506, 7B-2702, 7B-2704], as amended by Session Laws 1985, c. 777, appears on its face to be in conflict with 20 U.S.C. § 1415 and G.S. 115C-106 (repealed), 115C-114 (repealed), and former 115C-116 (repealed) to the extent that it authorizes the county director of social services to make educational decisions for a handicapped child in the custody of a department of social services. This apparent conflict should be resolved by giving full effect to 20 U.S.C. § 1415. See opinion of Attorney General to Mr. Johnnie Ellerbe, Consultant, Division for Exceptional Children, State Department of Public Instruction, 55 N.C.A.G. 94 (1986).

§ 115C-109.9. Review by review officer; appeals.

(a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section. The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record and the Office of Administrative Hearings. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section.

(b) A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education. No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

(c) The State Board may enforce the final decision of the administrative law judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of the Review Officer, by ordering a local educational agency:

(1) To provide a child with appropriate education;
(2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
(3) To reimburse parents for reasonable private school placement costs in accordance with this Article and IDEA when it is determined that the local educational agency did not offer or provide the child with appropriate education and the private school in which the parent placed the child was an approved school and did provide the child an appropriate education.

(d) Any party that does not have the right to appeal under this Part and any party who is aggrieved by the decision of the Review Officer under this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1415.

(e) Except as provided under IDEA, upon the filing of a petition under G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child must remain in the child's then-current educational placement or, if applying for initial admission to a public school, the child must be placed in the public school. Notwithstanding this subsection, the parties may agree in writing to a different educational placement for the child during the pendency of any proceedings under this Part. (2006-69, s. 2.)

§ 115C-110: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-110 was formerly codified in Part 1 of this Article.

Part 1E. Special Education and Related Services Personnel.

§ 115C-110.1. Teacher qualifications.

The Board shall adopt rules covering the qualifications of and standards for licensure of teachers, teacher assistants, speech-language pathologists, school psychologists, and others involved in the education and training of children with disabilities. (2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-110.2. Interpreters/transliterators.

Each interpreter or transliterator employed by a local educational agency to provide services to hearing-impaired students must annually complete 15 hours of job-related training that has been approved by the local educational agency. (2002-182, s. 6; 2003-56, s. 3; 2006-69, s. 2.)

Adoption of temporary rules by North Carolina Interpreter and Transliterator Licensing Board. — Session Laws 2003-56, s. 4, provides: "Notwithstanding G.S. 150B-21.1(a)(1), the North Carolina Interpreter and Transliterator Licensing Board may adopt temporary rules to implement S.L. 2002-182 until January 1, 2004."

§ 115C-110.3. through 115C-110.5. [Reserved].

§ 115C-111: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-111 was formerly codified in Part 2 of this Article.

Part 1F. Budgeting; Funds.

§ 115C-111.1. Out-of-state students; eligibility for State funds.

Notwithstanding any policy or rule adopted by the State Board of Education, if a local school administrative unit provides services to a student under a current IEP from another state while a determination is being made regarding the student's eligibility for services as a child with disabilities in North Carolina, the local school administrative unit is entitled to receive State funding to serve the student while the determination is being made. If the student is later determined not to qualify for services in North Carolina, the local school administrative unit is not required to repay State funds received while the determination is being made. (1997-117, s. 1; 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

§ 115C-111.2. Contracts with private service providers.

Local educational agencies furnishing special education and related services to children with disabilities may contract with private special education facilities or service providers to furnish any of these services that the public providers are unable to furnish. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.

(a) Notwithstanding any other State law and without regard for the place of domicile of a parent, the cost of a free appropriate public education for a child with disabilities who is placed in or assigned to a group home or foster home, under State and federal law, shall be borne by the local board of education in which the group home or foster home is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal year after all State and federal funding has been exhausted.

(b) The State Board of Education shall use State and federal funds appropriated for children with disabilities to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. Local school administrative units may submit a Special State Reserve Program application for foster home or group home children whose special education and related services costs exceed the per child group home allocation.

(c) The Department shall review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services. (1981, c. 859, s. 29.7; 2002-164, s. 2; 2003-294, s. 1; 2006-69, s. 2.)

Editor's Note. — Session Laws 2002-164, s. 3, as amended by Session Laws 2003-294, s. 5, provides: "The State Board of Education shall provide for a local school administrative unit to request funds from the Group Homes Program for Children with Disabilities if a child assigned to that unit was not in that unit's April child count for children with disabilities or the average daily membership for the previous school year. The local school administrative unit shall receive full school year funding upon the local school unit's request for group home or foster home program funds. These funds may not be requested except by a local school administrative unit."

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — The opinion cited below was decided under former G.S. 115C-140.1.

Right to Attend Only Schools of District of Domicile. — Except for certain limited exceptions in this section and former G.S. 115C-366.2 (repealed), principally concerning children in foster or group homes, a student has a right to attend only the schools of the school system within which the student, his parents or legal guardian are domiciled. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

§ 115C-111.4. Nonreduction.

Notwithstanding any of the other provisions of this Article, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by local school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with disabilities, without regard to which local educational agency has the child in its care, custody, control, or program. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former G.S. 115C-142.*

Special Education Teachers Not Given Greater Protection Against Dismissal. — The General Assembly did not intend this section to provide special education teachers with greater protection against dismissal due to a reduction-in-force than that provided other career teachers. Instead, the legislature intended that this section benefit special education students; the section was intended to prevent funds appropriated for special education from being used for other purposes, and was not designed to provide enhanced job protection for special education teachers. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

§ 115C-111.5. Allocation of federal funds.

Whenever any federal monies for the special education and related services for children with disabilities are made available, these funds shall be allocated according to a formula designed by the Board consistent with federal laws and regulations. This formula shall ensure equitable distribution of resources and shall be implemented as funds are made available from federal and State appropriations. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 2006-69, s. 2.)

§ 115C-111.6. Obligation to provide services for preschool children with disabilities.

State funds appropriated to the public schools to implement preschool services for children with disabilities under this Article and IDEA shall be used to provide special education and related services to preschool children with disabilities. These State funds shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

Preschool children with disabilities will continue to be served by all other State funds to which they are otherwise entitled. (2006-69, s. 2.)

§ 115C-112: Repealed by Session Laws 2006-69, s. 1, effective from and after July 1, 2006.

Editor's Note. — G.S. 115C-112 was formerly codified in Part 2 of this Article.

Part 1G. Council on Educational Services for Exceptional Children.

§ 115C-112.1. Establishment; organization; powers and duties.

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of a minimum of 24 members to be appointed as follows: four ex officio members; one individual with a disability and one representative of a private school appointed by the Governor; one member of the Senate and one parent of a child with a disability between the ages of birth and 26 appointed by the President Pro Tempore of the Senate; one member of the House of Representatives and one parent of a child with a disability appointed by the Speaker of the House of Representatives; and 14 members appointed by the State Board of Education. The State Board shall appoint members who represent individuals with disabilities, teachers, local school administrative units, institutions of higher education that prepare special education and related services personnel, administrators of programs for children with disabilities, charter schools, parents of children with disabilities, a State or local official who carries out activities under the federal McKinney-Vento Homeless Assistance Act, vocational, community, or business organizations concerned with the provision of transition services, and others as required by IDEA. The majority of members on the Council shall be individuals with disabilities or parents of children with disabilities. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The Board shall adopt rules to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of Health and Human Services or the Secretary's designee.
(2) The Secretary of Juvenile Justice and Delinquency Prevention or the Secretary's designee.
(3) The Secretary of Correction or the Secretary's designee.
(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education is two years. The term for members appointed by the State Board of Education is four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting. The Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The Council shall:

(1) Advise the Board with respect to unmet needs within the State in the education of children with disabilities.
(2) Comment publicly on rules, policies, and procedures proposed by the Board regarding the education of children with disabilities.
(3) Assist the Board in developing evaluations and reporting on data to the Secretary of Education under the federal Individuals with Disabilities Education Act (IDEA), as amended.
(4) Advise the State Board in developing corrective action plans to address findings identified in federal monitoring reports required under the federal Individuals with Disabilities Education Act (IDEA), as amended.
(5) Advise the State Board in developing and implementing policies relating to the coordination of services for children with disabilities.
(6) Carry out any other responsibility as designated by federal law or the State Board. (1973, c. 1079, ss. 1-4; 1977, c. 646, ss. 1-5, 1981, c. 423, s. 1; 1991, c. 739, s. 12; 1991 (Reg. Sess., 1992), c. 1038, s. 13;

1997-443, s. 11A.118(a); 1998-202, s. 4(l); 2000-137, s. 4(o); 2001-424, s. 28.29(a); 2006-69, s. 2.)

Editor's Note. — This Article was rewritten by Session Laws 2006-69, ss. 1 and 2. The historical citations in the former sections have been added to the corresponding sections in this Article as rewritten.

Part 2. Nondiscrimination in Education.

§§ 115C-113 through 115C-115: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 3. Appeals.

§ 115C-116: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 4. Regional Educational Training Center.

§§ 115C-117 through 115C-120: Repealed by Session Laws 1997-18, s. 16.

Editor's Note. — G.S. 115C-117 was amended by Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997. However, because of the repeal by Session Laws 1997-18, s. 16, the amendment was not given effect.

Part 5. Council on Educational Services for Exceptional Children.

§ 115C-121: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 6. Range of Services Available.

§ 115C-122: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 7. State Schools for Hearing-impaired Children.

§§ 115C-123 through 115C-126.1: Recodified as §§ 143B-216.40 through 143B-216.44 by Session Laws 1997-18, s. 12.

Part 8. State School for Sight-impaired Children.

§§ 115C-127, 115C-128: Recodified as §§ 143B-164.10 and 143B-164.13.

§ 115C-129: Reserved for future codification purposes.

§§ 115C-130 through 115C-133: Recodified as §§ 143B-164.14 through 143B-164.17.

Part 9. Central Orphanage of North Carolina.

§§ 115C-134 through 115C-138: Repealed by Session Laws 1997-18, s. 14.

Editor's Note. — Session Laws 1997-18, s. 14, effective July 1, 1997, provides in part: "This repeal shall not impair the continuing existence of any corporation established under Chapter 47, Private Laws of 1887, and continued under Part 9 of Article 9 of Chapter 115C of the General Statutes."

Part 10. State and Local Relationships.

§§ 115C-139 through 115C-140.1: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 11. Rules and Regulations.

§ 115C-141: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 12. Nonreduction Provision.

§ 115C-142: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

Part 13. Budget Analysis and Departmental Funding.

§ 115C-143: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1282, s. 29.

§ 115C-144: Repealed by Session Laws 1997-18, s. 7.

§ 115C-145: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§ 115C-146: Reserved for future codification purposes.

Part 14. Handicapped Children, Ages Three to Five.

§§ 115C-146.1 through 115C-146.4: Repealed by Session Laws 2006-69, s. 1, effective July 10, 2006.

§§ 115C-147, 115C-148: Reserved for future codification purposes.

ARTICLE 9A.

Children with Chemical Dependency.

§ 115C-149. Policy. Chemically dependent children excluded from provisions of Article 9.

The General Assembly of North Carolina hereby declares that the policy of the State is to ensure that an appropriate education is provided for drug and alcohol addicted children; however, drug and alcohol addicted children are not "children with disabilities" within the meaning of G.S. 115C-106.3(1) unless because of some other condition they meet that definition. (1989, c. 316, s. 1; 2006-69, s. 3(c).)

§ 115C-150. State Board to adopt rules.

The State Board of Education shall adopt rules to ensure that local school administrative units provide an appropriate education for drug and alcohol addicted children. (1989, c. 316, s. 1.)

§§ 115C-150.1 through 115C-150.4: Reserved for future codification purposes.

ARTICLE 9B.

Academically or Intellectually Gifted Students.

§ 115C-150.5. Academically or intellectually gifted students.

The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high performance capability in intellectual areas, specific academic fields, or in both intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

§ 115C-150.6. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education shall:

(1) Develop and disseminate guidelines for developing local plans under G.S. 115C-150.7(a). These guidelines should address identification procedures, differentiated curriculum, integrated services, staff development, program evaluation methods, and any other information the State Board considers necessary or appropriate.

(2) Provide ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-150.7. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

§ 115C-150.7. Local plans.

(a) Each local board of education shall develop a local plan designed to identify and establish a procedure for providing appropriate educational services to each academically or intellectually gifted student. The board shall include parents, the school community, representatives of the community, and others in the development of this plan. The plan may be developed by or in conjunction with other committees.

(b) Each plan shall include the following components:

(1) Screening, identification, and placement procedures that allow for the identification of specific educational needs and for the assignment of academically or intellectually gifted students to appropriate services.

(2) A clear statement of the program to be offered that includes different types of services provided in a variety of settings to meet the diversity of identified academically or intellectually gifted students.

(3) Measurable objectives for the various services that align with core curriculum and a method to evaluate the plan and the services offered. The evaluation shall focus on improved student performance.

(4) Professional development clearly matched to the goals and objectives of the plan, the needs of the staff providing services to academically or intellectually gifted students, the services offered, and the curricular modifications.

(5) A plan to involve the school community, parents, and representatives of the local community in the ongoing implementation of the local plan, monitoring of the local plan, and integration of educational services for academically or intellectually gifted students into the total school program. This should include a public information component.

(6) The name and role description of the person responsible for implementation of the plan.

(7) A procedure to resolve disagreements between parents or guardians and the local school administrative unit when a child is not identified as an academically or intellectually gifted student or concerning the appropriateness of services offered to the academically or intellectually gifted student.

(8) Any other information the local board considers necessary or appropriate to implement this Article or to improve the educational performance of academically or intellectually gifted students.

(c) Upon its approval of the plan developed under this section, the local board shall submit the plan to the State Board of Education for its review and comments. The local board shall consider the comments it receives from the State Board before it implements the plan.

(d) A plan shall remain in effect for no more than three years; however, the local board may amend the plan as often as it considers necessary or appropriate. Any changes to a plan shall be submitted to the State Board of Education for its review and comments. The local board shall consider the State Board's comments before it implements the changes. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

§ 115C-150.8. Review of Disagreements.

In the event that the procedure developed under G.S. 115C-150.7(b)(7) fails to resolve a disagreement, the parent or guardian may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes. The scope of review shall be limited to (i) whether the local school administrative unit improperly failed to identify the child as an academically or intellectually gifted student, or (ii) whether the local plan developed under G.S. 115C-150.7 has been implemented appropriately with regard to the child. Following the hearing, the administrative law judge shall make a decision that contains findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final, is binding on the parties, and is not subject to further review under Article 4 of Chapter 150B of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

Article 10.

Vocational and Technical Education.

Part 1. Vocational and Technical Education Programs.

§ 115C-151. Statement of purpose.

It is the intent of the General Assembly that vocational and technical education be an integral part of the educational process. The State Board of Education shall administer through local boards of education a comprehensive program of vocational and technical education that shall be available to all students, with priority given to students in grades eight through 12, who desire it in the public secondary schools and middle schools of this State. The purposes of vocational and technical education in North Carolina public secondary schools shall be:

(1) Occupational Skill Development. — To prepare individuals for paid or unpaid employment in recognized occupations, new occupations, and emerging occupations.

(2) Preparation for Advanced Education. — To prepare individuals for participation in advanced or highly skilled vocational and technical education.

(3) Career Development; Introductory. — To assist individuals in the making of informed and meaningful occupational choices.

It is also legislative intent to authorize the State Board of Education to support appropriate vocational and technical education instruction and related services for individuals who have special vocational and technical education needs which can be fulfilled through a comprehensive vocational and technical education program as designated by State Board of Education policy or federal vocational and technical education legislation. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1987, c. 738, s. 183; 1993, c. 180, s. 3; 2004-124, s. 7.15(b).)

§ 115C-152. Definitions.

The State Board of Education shall provide appropriate definitions to vocational and technical education programs, services, and activities in grades 6-12 not otherwise included in this Part. As used in this Part, unless the context requires otherwise:

(1) "Career development; introductory" means an instructional program, service, or activity designed to familiarize individuals with the broad range of occupations for which special skills are required and the requisites for careers in such occupations.

(2) "Comprehensive vocational and technical education" means instructional programs, services, or activities directly related to preparation for and placement in employment, for advanced technical prepara-

tion, or for the making of informed and meaningful educational and occupational choices.

(3) "Occupational skill development" means a program, service, or activity designed to prepare individuals for paid or unpaid employment as semiskilled or skilled workers, technicians, or professional-support personnel in recognized occupations and in new and emerging occupations including occupations or a trade, technical, business, health, office, homemaking, homemaking-related, agricultural, marketing, and other nature. Instruction is designed to fit individuals for initial employment in a specific occupation or a cluster of closely related occupations in an occupational field. This instruction includes education in technology, manipulative skills, theory, auxiliary information, application of academic skills, and other associated knowledges.

(4) "Preparation for advanced education" means a program, service, or activity designed to prepare individuals for participation in advanced or highly skilled post-secondary and technical education programs leading to employment in specific occupations or a cluster of closely related occupations and for participation in vocational and technical education teacher education programs. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1987, c. 738, s. 184; 1993, c. 180, s. 3.)

§ 115C-153. Administration of vocational and technical education.

The State Board of Education shall be the sole State agency for the State administration of vocational and technical education at all levels, shall be designated as the State Board of Vocational and Technical Education, and shall have all necessary authority to cooperate with any and all federal agencies in the administration of national acts assisting vocational and technical education, to administer any legislation pursuant thereto enacted by the General Assembly of North Carolina, and to cooperate with local boards of education in providing vocational and technical education programs, services, and activities for youth and adults residing in the areas under their jurisdiction. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-154. Duties of the State Board of Education.

In carrying out its duties, the State Board of Education shall develop and implement any policies, rules, regulations, and procedures as necessary to ensure vocational and technical education programs of high quality. The State Board of Education shall prepare a Master Plan for Vocational and Technical Education. The plan, to be updated periodically, shall ensure minimally that:

(1) Articulation shall occur with institutions, agencies, councils, and other organizations having responsibilities for work force preparedness.

(2) Business, industrial, agricultural, and lay representatives, including parents of students enrolled in Vocational and Technical Education courses, organized as advisory committees have been utilized in the development of decisions affecting vocational and technical education programs and services.

(3) Public hearings are conducted annually to afford the public an opportunity to express their views concerning the State Board's plan and to suggest changes in the plan.

(4) The plan describes the State's policy for vocational and technical education and the system utilized for the delivery of vocational and technical education programs, services, and activities. The policy shall include priorities of curriculum, integration of vocational and

academic education, technical preparation, and youth apprenticeships.

(5) A professionally and occupationally qualified staff is employed and organized in a manner to assure efficient and effective State leadership for vocational and technical education. Provisions shall be made for such functions as: planning, administration, supervision, personnel development, curriculum development, vocational student organization and coordination research and evaluation, and such others as the State Board may direct.

(6) An appropriate supply of qualified personnel is trained for program expansion and replacements through cooperative arrangements with institutions of higher education and other institutions or agencies, including where necessary financial support of programs and curriculums designed for the preparation of vocational administrators, supervisors, coordinators, instructors, and support personnel.

(7) Minimum standards shall be prescribed for personnel employed at the State and local levels.

(8) Local boards of education submit to the State Board of Education a local plan for vocational and technical education that has been prepared in accordance with the procedures set forth in the Master Plan for Vocational and Technical Education.

(9) Appropriate minimum standards for vocational and technical education programs, services, and activities shall be established, promulgated, supervised, monitored, and maintained. These standards shall specify characteristics such as program objectives, competencies, course sequence, program duration, class size, supervised on-the-job experiences, vocational student organization, school-to-work transition programs, qualifications of instructors, and all other standards necessary to ensure that all programs conducted by local school administrative units shall be of high quality, relevant to student needs, and coordinated with employment opportunities.

(10) A system of continuing qualitative and quantitative evaluation of all vocational and technical education programs, services, and activities supported under the provisions of this Part shall be established, maintained, and utilized periodically. One component of the system shall be follow-up studies of employees and former students of vocational and technical education programs who have been out of school for one year, and for five years to ascertain the effectiveness of instruction, services, and activities. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1983, c. 750, s. 1; 1993, c. 180, s. 3.)

§ 115C-154.1. Approval of local vocational and technical education plans or applications.

The State Board of Education shall not approve any local vocational and technical education plans or applications unless:

(1) The programs are in accordance with the purposes of G.S. 115C-151;

(2) The vocational programs and courses are not duplicated within a local school administrative unit, unless the unit has data to justify the duplication or the unit has a plan to redirect the duplicative programs within three years;

(3) For all current job skill programs, there is a documented need, based on labor market data or follow-up data, or there is a plan to redirect the program within two years;

(4) New vocational programs show documented need based on student demand, or for new job skill programs, based on student and labor market demand; and

(5) All programs are responsive to technological advances, changing characteristics of the work force, and the academic, technical, and attitudinal development of students.

Local programs using the cooperative vocational and technical education method shall be approved subject to students enrolled being placed in employment commensurate with the respective program criteria. (1987, c. 738, s. 185; 1993, c. 180, s. 3.)

§ 115C-154.2. Vocational and technical education equipment standards.

The State Board of Education shall develop equipment standards for each vocational and technical education program level and shall assist local school administrative units in determining the adequacy of equipment for each vocational and technical education program available in each local school administrative unit.

The State Board shall also develop a plan to assure that minimum equipment standards for each program are met to the extent that State, local, and federal funds are available for that purpose. The State Board shall consider all reasonable and prudent means to meet these minimum equipment standards and to ensure a balanced vocational and technical education program for students in the public schools. (1991, c. 570, s. 1; 1993, c. 180, s. 3.)

§ 115C-155. Acceptance of benefits of federal vocational acts.

The State of North Carolina, through the State Board of Education, may accept all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for vocational and technical education programs: Provided, however, that the State Board of Education shall not accept those funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statutes of this State. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-156. State funds for vocational and technical education.

It is the intent of the General Assembly of North Carolina to appropriate funds for each fiscal year to support the purposes of vocational and technical education as set forth in G.S. 115C-151. From funds appropriated, the State Board of Education shall establish a sum of money for State administration of vocational and technical education and shall allocate the remaining sum on an equitable basis to local school administrative units, except that a contingency fund is established to correct excess deviations that may occur during the regular school year. In the administration of State funds, the State Board of Education shall adopt such policies and procedures as necessary to ensure that the funds appropriated are used for the purpose stated in this Part and consistent with the policy set forth in the Master Plan for Vocational Education. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-156.1: Repealed by Session Laws 1993, c. 180, s. 3.

§ 115C-157. Responsibility of local boards of education.

Each local school administrative unit, shall provide free appropriate vocational and technical education instruction, activities, and services in accordance with the provisions of this Part for all youth, with priority given to youth in grades eight through 12, who elect the instruction and shall have responsibility for administering the instruction, activities, and services in accordance with federal and State law and State Board of Education policies. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1993, c. 180, s. 3; 2004-124, s. 7.15(c).)

§ 115C-158. Federal funds division.

The division between secondary and post-secondary educational systems and institutions of federal funds for which the State Board of Vocational and Technical Education has responsibility shall, within discretionary limits established by law, require the concurrence of the State Board of Education and the State Board of Community Colleges on and after January 1, 1981. The portion of the approved State Plan for post-secondary vocational and technical education required by G.S. 115C-154 shall be as approved by the State Board of Community Colleges. (1979, 2nd Sess., c. 1130, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

Part 2. Vocational and Technical Education Production Work Activities.

§ 115C-159. Statement of purpose.

It is the intent of the General Assembly that practical work experiences within the school and outside the school, which are valuable to students and which are under the supervision of a teacher, should be encouraged as a part of vocational and technical education instruction in the public secondary schools and middle schools when those experiences are organized and maintained to the best advantage of the vocational programs. Those activities are a part of the instructional activities in the vocational programs and are not to be construed as engaging in business. Those services, products, and properties generated through these instructional activities are exempt from the requirements of G.S. 115C-518; the local board shall adopt rules for the disposition of these services, products, and properties. Local boards of education may use available financial resources to support that instruction. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1983, c. 750, s. 2; 1985, c. 479, s. 32; 1987, c. 738, s. 184; 1993, c. 180, s. 3.)

§ 115C-160. Definitions.

The State Board of Education shall provide appropriate definitions necessary to this part of vocational and technical education instruction not otherwise included in this Part. As used in this Part, unless the context requires otherwise:

(1) The term "building trades training" means the development of vocational skills through the construction of dwellings or other buildings and related activities by students in vocational and technical education programs.

(2) The term "production work" means production activities and services performed by vocational and technical education classes under contract with a second party for remuneration. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-161. Duties of the State Board of Education.

The State Board of Education is authorized and directed to establish, maintain, and implement such policies, rules, regulations, and procedures not in conflict with State law or other State Board policies as necessary to assist local boards of education in the conduct of production work experiences performed in connection with approved State Board of Education vocational and technical education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-162. Use of proceeds derived from production work.

Unless elsewhere authorized in these statutes, local boards of education shall deposit to the appropriate school account, no later than the end of the next business day after receipt of funds, all proceeds derived from the sale of products or services from production work experiences. These proceeds shall be established as a revolving fund to be used solely in operating and improving vocational and technical education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-163. Acquisition of land for agricultural education instructional programs.

Local boards of education may acquire by gift, purchase, or lease for not less than the useful life of any project to be conducted upon the premises, a parcel of land suitable for a land laboratory to provide students with practical instruction in soil science, plant science, horticulture, forestry, animal husbandry, and other subjects related to the agriculture curriculum.

Each deed, lease, or other agreement for land shall be made to the respective local board of education in which the school offering instruction in agriculture is located; and title to such land shall be examined and approved by the school attorney.

Any land laboratory thus acquired shall be assigned to the agricultural education program of the school, to be managed with the advice of an agricultural education advisory committee.

The products of the land laboratory not needed for public school purposes may be sold to the public: Provided, however, that all proceeds from the sale of products shall be deposited in the appropriate school account no later than the end of the next business day after receipt of funds. The proceeds shall be established as a revolving fund to be used solely in operating and improving vocational and technical education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-164. Building trades training.

In the establishment and implementation of production work experience policies, the State Board of Education shall be guided as follows:

(1) Local boards of education may use supplementary tax funds or other local funds available for the support of vocational and technical education to purchase and develop suitable building sites on which dwellings or other buildings are to be constructed by vocational and technical education trade classes of each public school operated by local boards of education. Local boards of education may use these funds for each school to pay the fees necessary in securing and recording deeds to these properties for each public school operated by local boards of education and to purchase all materials needed to complete the construction of buildings by vocational and technical education trade classes and for development of site and property by other vocational and technical education classes. Local boards of

education may use these funds to acquire skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading, and landscaping needed in the construction and completion of buildings, that cannot be supplied by the students in vocational and technical education trade classes.

(2) Local boards of education may, in conjunction with or in lieu of subdivision (1) of this section, contract with recognized building trades educational foundations or associations in the purchase of land for the construction and development of buildings: Provided however, that all contracts shall be in accordance with the requirements set forth by the State Board of Education. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1993, c. 180, s. 3.)

§ 115C-165. Advisory committee on production work activities.

The board of education of each local school administrative unit in which the proposed production work activities are to be undertaken shall appoint appropriate advisory committees of no less than three persons residing within that administrative unit for each program (or in the case of Trade and Industrial Education, for each specialty) for the purpose of reviewing and making recommendations on such production work activities. Respective advisory committee members shall be lay persons who are actively involved in the appropriate business or trade. No production work activity shall be undertaken without the involvement of the appropriate advisory committee. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1983, c. 750, s. 3.)

Part 3. Eye Safety Devices Required.

§ 115C-166. Eye protection devices required in certain courses.

The governing board or authority of any public or private school or educational institution within the State, wherein shops or laboratories are conducted providing instructional or experimental programs involving:

(1) Hot solids, liquids or molten metals;
(2) Milling, sawing, turning, shaping, cutting, or stamping of any solid materials;
(3) Heat treatment, tempering, or kiln firing of any metal or other materials;
(4) Gas or electric arc welding;
(5) Repair or servicing of any vehicle; or
(6) Caustic or explosive chemicals or materials,

shall provide for and require that every student and teacher wear industrial-quality eye protective devices at all times while participating in any such program. These industrial-quality eye protective devices shall be furnished free of charge to the student and teacher. (1969, c. 1050, s. 1; 1981, c. 423, s. 1.)

§ 115C-167. Visitors to wear eye safety devices.

Visitors to such shops and laboratories shall be furnished with and required to wear such eye safety devices while such programs are in progress. (1977, c. 1050, s. 2; 1981, c. 423, s. 1.)

§ 115C-168. "Industrial-quality eye protective devices" defined.

"Industrial-quality eye protective devices", as used in G.S. 115C-166, means devices meeting the standards of the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968 approved by the U.S.A. Standards Institute, Inc. (1969, c. 1050, s. 3; 1981, c. 423, s. 1.)

§ 115C-169. Corrective-protective devices.

In those cases where corrective-protective devices that require prescription ophthalmic lenses are necessary, such devices shall only be supplied by those persons licensed by the State to prescribe or supply corrective-protective devices. (1969, c. 1050, s. 4; 1981, c. 423, s. 1.)

§§ 115C-170 through 115C-174: Reserved for future codification purposes.

Article 10A.

Testing.

Part 1. Commission on Testing.

§§ 115C-174.1 through 115C-174.6: Repealed by Session Laws 1995, c. 524, s. 1.

§§ 115C-174.7 through 115C-174.9: Reserved for future codification purposes.

Part 2. Statewide Testing Program.

§ 115C-174.10. Purposes of the Statewide Testing Program.

The testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results. (1977, c. 522, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1995, c. 524, s. 2; 2009-451, s. 7.20(a).)

Editor's Note. — Session Laws 2007-445, s. 1(a)-(c), provides: "(a) The State Board of Education shall designate schools which meet two or more of the following criteria as high-need schools:

"(1) More than forty-five percent (45%) of students perform at Level 1 or Level 2 on end-of-grade or end-of-course tests,

"(2) Teacher turnover rate is greater than twenty-five percent (25%), or

"(3) More than eighty percent (80%) of students qualify for free or reduced-price lunches.

"(b) Beginning with the 2008-2009 school year, to ensure that the schools designated as high-need schools by the State Board of Education have the high quality staff and the additional support they need, the following modifications to law, policy, or both shall apply:

"(1) National Board Certified Teachers who serve as mentors, literacy coaches, or in other nonadministrative instructional leadership positions at these schools shall retain the twelve percent (12%) salary increment for NBPTS certification, notwithstanding G.S. 115C-296.2.

"(2) National Board Certified Teachers, teachers of the year, and other categories of accomplished teachers designated by the State Board of Education shall be given the academic freedom at these schools to use research-based practices in the classroom that go beyond the standard course of study.

"(c) The State Board of Education shall consider the following strategies to ensure that the high-need schools have the high quality staff and the additional support they need and shall report by January 15, 2008, to the Joint Legislative Education Oversight Committee on the cost of implementing for the 2008-2009 fiscal year:

"(1) Adding additional teacher positions at these schools to reduce class size.

"(2) Providing incentives to attract National Board Certified Teachers to these schools.

"(3) Employing teachers at these schools for 11 months. These teachers shall use the extra month of employment for curriculum development, staff development, and planning for the next school year."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.20(a), effective July 1, 2009, deleted "three" preceding "testing."

§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. — The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving a federal grant under the Reading First Program.

(b) Repealed by Session Laws 2009-451, s. 7.20(c), effective July 1, 2009.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. The State Board may develop and implement a plan for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c). Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states. (1977, c. 522, s. 1; c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1987, c. 738, s. 180(a); 1987 (Reg. Sess., 1988), c. 1086, s. 77(a); 1989, c. 778, ss. 4, 5; 1995, c. 524, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 18.14; 1998-212, s. 9.15(b); 1998-220, ss. 6, 11; 2000-140, s. 21(a), (b); 2003-275, s. 1; 2004-124, ss. 7.11, 7.27; 2005-458, s. 3; 2009-451, s. 7.20(c).)

Editor's Note. — Session Laws 2002-126, s. 7.44, as amended by Session Laws 2002-159, s. 70.5(a), provides: "Notwithstanding G.S. 115C-174.11(a), the Department of Public Instruction may administer a standardized reading test measure for a pilot study of the comparative predictive validity of the reading assessment used in kindergarten through second grade. This standardized measure may be administered to students in eligible public schools, including charter schools, and is limited to the extent necessary to receive funds as part of the federal Reading First Grant. The results of this standardized measure shall not be used to evaluate, promote, or retain any student."

Session Laws 2002-159, s. 70.5(b), provides: "This section applies only to the extent that and at such times as it is necessary to receive and retain funds as part of the federal Reading First Grant. This section expires at the time that the federal Reading First Grant expires. In the event that the State is not awarded funds as a part of the federal Reading First Grant, the Department shall not continue to implement Section 7.44 of S.L. 2002-126, as rewritten by this section."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6, is a severability clause.

Session Laws 2003-275, s. 2, as amended by Session Laws 2004-124, s. 7.27, provides: "This act becomes effective July 1, 2003. G.S. 115C-174.11(b)(3a), as created in Section 1 of this act, shall be implemented no later than the 2004-2005 school year. The State Board of Education shall adopt or develop and validate the alternate tests required under G.S. 115C-174.11(b)(3), as amended by Section 1 of this act, no later than April 15, 2005, and shall implement these alternate tests beginning with the 2005-2006 school year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2009-451, s. 7.18(b), as amended by Session Laws 2009-575, s. 3F, provides: "Notwithstanding G.S. 115C-174.11, the State Board of Education shall investigate and pilot a developmentally appropriate diagnostic assessment for students in elementary grades during the 2009-2010 school year. This assessment will (i) enable teachers to determine student learning needs and individualize instruction and (ii) ensure that students are adequately prepared for the next level of coursework as set out by the standard course of study.

"The State Board of Education shall report the results of the pilot to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management, by December 1, 2010.

"Savings that result from eliminating tests shall be used to implement this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.20(c), effective July 1, 2009, deleted subsection (b), regarding competency testing program; and in subdivision (c)(1), deleted the former last sentence, which read: "This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section."

§ 115C-174.12. Responsibilities of agencies.

(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

(1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;

(2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and

(3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(b1) The Superintendent shall notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual tests to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs. (1977, c. 522, ss. 4-6; c. 541, ss. 2, 5-7; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1995, c. 524, s. 4; 2001-424, s. 28.17(f); 2002-126, s. 7.30; 2002-159, s. 70; 2005-276, s. 7.37; 2009-451, s. 7.20(d).)

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(a), provides: "The State Board of Education shall provide the Joint Legislative Education Oversight Committee with a detailed analysis of the current resources allocated to meet the needs of all students subject to the Statewide Student Accountability Standards, and in addition, shall submit recommendations regarding other resources that would best assist students in meeting these new standards."

Session Laws 2001-424, s. 28.17(g), provides: "Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning."

Session Laws 2001-424, s. 28.17(h), as amended by 2001-487, s. 116, provides: "Students in a local school shall not be subject to field tests or national tests during the two-week period preceding the administration of the end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams. No school shall participate in more than two field tests at any one grade level during a school year unless:

"(1) That school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests; or

"(2) The State Board of Education makes written findings, based on information provided by the Department of Public Instruction, that an additional field test must be administered at that school to ensure the reliability and validity of a specific test."

Session Laws 2001-424, s. 28.17(j), provides: "The State Board of Education shall develop and report to the Joint Legislative Education Oversight Committee on its objectives for the Statewide Testing Program and on the implementation of that Program. The report shall include:

"(1) A statement of the relationship between these objectives and the tests currently administered under the Program;

"(2) An analysis of whether the current tests appropriately achieve these objectives;

"(3) A statement of any actions that may be needed to coordinate the objectives and the tests more effectively; and

"(4) Strategies for communicating the objectives of the Program, the tests administered under the Program, and the relationship between these objectives and tests to principals, teachers, parents, and students throughout the State."

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.20(d), effective July 1, 2009, in subsection (c), in the second sentence, substituted "annual tests" for "annual and competency testing programs" and in the last sentence, deleted "further" from the end.

§ 115C-174.13. Public records exemption.

Any written material containing the identifiable scores of individual students on any test taken pursuant to the provisions of this Article is not a public record within the meaning of G.S. 132-1 and shall not be made public by any person, except as permitted under the provisions of the Family Educational and Privacy Rights Act of 1974, 20 U.S.C. 1232g. (1977, c. 522, s. 7; c. 541, s. 8; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a).)

§ 115C-174.14. Provisions for nonpublic schools.

All components of the Statewide Testing Program shall be made available to nonpublic schools in the manner prescribed in G.S. 115C-551 and G.S. 115C-559. (1977, c. 522, s. 8; c. 541, s. 9; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a).)

§§ 115C-174.15 through 115C-174.17: Reserved for future codification purposes.

Part 3. Preliminary Scholastic Aptitude Test Opportunities Encouraged.

§ 115C-174.18. Opportunity to take Preliminary Scholastic Aptitude Test.

Every student in the eighth through tenth grades who has completed Algebra I or who is in the last month of Algebra I shall be given an opportunity to take a version of the Preliminary Scholastic Aptitude Test (PSAT) one time at State expense. (1989, c. 752, s. 77(a); 2005-154, s. 1.)

§ 115C-174.19: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 5.

Article 11.

High School Competency Testing.

§§ 115C-175 through 115C-188: Repealed by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 74(a).

Cross References. — For present provisions as to testing, see G.S. 115C-174.1 et seq.

Article 12.

Statewide Testing Program.

§§ 115C-189 through 115C-202: Repealed by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 74(a).

Cross References. — For present provisions as to testing, see G.S. 115C-174.1 et seq.

Article 13.

Community Schools Act.

§ 115C-203. Title of Article.

This Article shall be known and may be cited as the "Community Schools Act." (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-204. Purpose of Article.

The purpose of this Article is to encourage greater community involvement in the public schools and greater community use of public school facilities. To this end it is declared to be the policy of this State:

(1) To provide for increased involvement by citizens in their local schools through community schools advisory councils.
(2) To assure maximum use of public school facilities by the citizens of each community in this State.

It is further declared to be the policy of this State that, to the extent sufficient funds are made available, each local board of education shall comply with the provisions of this Article. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-205. Definitions.

As used in this Article:

(1) The term "community schools advisory council" means a committee of citizens organized to advise community school coordinators, administrators, and local boards of education in the involvement of citizens in the educational process and in the use of public school facilities.
(2) The term "community schools coordinator" means an employee of a local board of education whose responsibility it is to promote and direct maximum use of the public schools and public school facilities as centers for community development.

(3) The term "interagency council" means a committee of agency and organizational representatives appointed by the Governor to work with the Superintendent of Public Instruction concerning the involvement of statewide agencies and organizations with the public schools.

(4) The term "public school facility" means any education facility under the jurisdiction of a local board of education, whether termed an elementary school, middle school, junior high school, high school or union school. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-206. State Board of Education; duties; responsibilities.

The Superintendent of Public Instruction shall prepare and present to the State Board of Education recommendations for general guidelines for encouraging increased community involvement in the public schools and use of public school facilities. These recommendations shall include, but shall not be limited to provisions for:

(1) The use of public school facilities by governmental, charitable or civic organizations for activities within the community.

(2) The utilization of the talents and abilities of volunteers within the community for the enhancement of public school programs including tutoring, counseling and cultural programs and projects.

(3) Increased communications between the staff and faculty of the public schools, other community institutions and agencies, and citizens in the community.

Based on the recommendations of the Superintendent of Public Instruction, the State Board of Education shall adopt appropriate policies and guidelines for encouraging increased community involvement in the public schools and use of the public school facilities. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 8.)

§ 115C-207. Authority and responsibility of local boards of education.

Every local board of education that uses State funds to implement programs under this Article shall:

(1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.

(1a) Develop policies and programs designed to encourage the use of community-based academic booster organizations, which may be known as Community Achievement Network — Developing Our Educational Resources (CAN DOER) organizations, to provide tutoring and other appropriate services to encourage and support student academic achievement.

(1b) Develop policies and/or procedures for approving the use of volunteer organizations and for approving the use of individual volunteers.

(1c) Develop policies and/or procedures designed to make information available to parents and students about what tutoring and other academic support services are available to students in the community or through school volunteers or other community organizations.

(2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education.

(3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted

programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education may provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education using State funds to implement a community schools program under this Article may enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of these State funds. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 9; 2009-453, s. 1.)

Effect of Amendments. — Session Laws 2009-453, s. 1, effective August 7, 2009, added subdivisions (1a) through (1c).

§ 115C-208. Community schools advisory councils; duties; responsibilities; membership.

Every local board of education that establishes a community schools program under this Article may establish one or more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further may consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils may work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and may encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council should be the parents of students in the particular public school system: Provided, that less than twenty-five percent (25%) of the pupils attending a particular school reside outside the immediate community of the school, at least one half of the members should be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of membership on the councils shall be determined by the local board of education in accordance with the State guidelines. (1977, c. 682; 1979, c. 828; 1981, c. 423, s. 1; 1995, c. 450, s. 10.)

§ 115C-209. Community schools coordinators.

Every local board of education may employ one or more community schools coordinators and shall establish the terms and conditions of their employment. Community schools coordinators shall be responsible for:

(1) Providing support to the community schools advisory councils and public school officials.

(2) Fostering cooperation between the local board of education and appropriate community agencies.
(3) Encouraging maximum use of community volunteers in the public schools.
(4) Performing any other duties as may be assigned by the local superintendent and the local board of education, consistent with the purposes of this Article. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 11.)

§ 115C-209.1. Nondisclosure of certain volunteer records.

(a) The records comprising a volunteer file of a local school administrative unit are not public records as provided in Chapter 132 of the General Statutes. These records shall be open for inspection only to the following individuals:
(1) The volunteer, former volunteer, individual who applied to be a volunteer, or that individual's properly authorized agent who may examine the individual's file in its entirety at any reasonable time.
(2) The superintendent and other supervisory personnel.
(3) The parent or guardian of any student with whom the volunteer has or had contact.
(4) Members of the local board of education and the board's attorney.
(5) A party to a lawsuit, by authority of a subpoena or proper court order, only to the extent authorized by and in accordance with that subpoena or court order.

(b) A local board of education shall also release or permit the inspection of a volunteer file, except as prohibited by State or federal law, if prior to the release of the information or inspection of the file:
(1) The local board of education determines that the release of the information or inspection of the file is essential (i) to maintaining the integrity of the local board of education or (ii) to maintaining the level or quality of services provided by the local board of education; or
(2) The local board of education makes a written finding that there is a substantial showing of the criteria set forth in subdivision (1) of this subsection. The local board of education's written finding shall be a public record.

(c) A volunteer shall be notified at the time the individual applies to volunteer that the local board of education may maintain a volunteer file on the individual, and that information in that file may be open to inspection in accordance with this section.

(d) This section shall not be construed to require a local school administrative unit to maintain records on volunteers, former volunteers, or individuals applying to be volunteers.

(e) As used in this section, the following terms mean:
(1) Volunteer. — An individual who provides services to a local board of education without expectation of compensation and with the understanding that the local board of education is under no obligation to continue accepting those services or to compensate the volunteer for them.
(2) Volunteer file. — Any information collected by the local board of education regarding volunteers, former volunteers, and individuals applying to be volunteers that relates to the individual's application, selection or nonselection, performance, disciplinary action, or termination, wherever that information is located or in whatever form it is maintained. (2003-353, s. 1.)

ARTICLE 13A.

State Advisory Council on Indian Education.

§ 115C-210. Council established.

There is hereby established an advisory council to the State Board of Education to be known as the "State Advisory Council on Indian Education". (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.1. Membership — How appointed.

The Council shall consist of 15 members, as follows:

(1) Two legislative members (one senator appointed by the President Pro Tempore of the Senate and one representative appointed by the Speaker of the House);

(2) Two Indian members from higher education to be appointed by the Board of Governors of the University system;

(3) One Indian member from the North Carolina Commission on Indian Affairs to be appointed by that Commission;

(4) Eight Indian parents of students enrolled in public schools and two Indian educators from public elementary/secondary schools to be appointed by the State Board of Education from a list submitted by the North Carolina Commission on Indian Affairs;

(5) Indian members of the Council shall be broadly representative of North Carolina Indian tribes and organizations, specifically, the Eastern Band of Cherokee, Lumbee, Coharie, Waccamaw-Siouan, Haliwa Saponi, Meherrin, Person County Indians, Cumberland County Association for Indian People, the Guilford Native American Association, the Metrolina Native American Association, and any other Indian tribe gaining State recognition in the future. (1987 (Reg. Sess., 1988), c. 1084, s. 1; 1991, c. 739, s. 13; 1997-456, s. 27.)

§ 115C-210.2. Term of office.

The legislative members, the higher education members, and the member from the North Carolina Commission on Indian Affairs shall serve for an unspecified term at the pleasure of their respective appointing authorities. The public school educators and the Indian parents shall each be divided into two classes, with one class being appointed initially for a term of one year and one class being appointed initially for a term of two years. Assignment of initial appointees to classes shall be by lot conducted by the State Board of Education just prior to the initial appointment. All subsequent terms shall be for a period of two years, and no member shall serve for more than two consecutive full terms. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.3. Organization, meetings, and compensation.

(a) At its initial meeting, the Council shall elect a chairperson from its membership.

(b) The Council shall meet in space to be provided by the Department of Public Instruction on such dates as are agreed on by the membership from meeting to meeting: provided, however, that the Council shall meet at least three, but no more than four times each year. The Council may meet at emergency meetings called by the chairperson. The Department of Public

Instruction shall provide necessary staff support and supplies to enable the Council to carry out its duties in an effective manner.

(c) Council members shall serve without pay, but shall receive travel allowances, lodging, subsistence and per diem as provided by G.S. 138-5. (1987 (Reg. Sess., 1988), c. 1084, s. 1.)

§ 115C-210.4. Duties of the Council.

It shall be the duty of the Advisory Council:

(1) To advise the State Board of Education on ways to meet more effectively the educational needs of Indian students;

(2) To advocate meaningful programs to reduce and eventually eliminate low achievement and concurrent high attrition rates among American Indian students;

(3) To prepare an annual report on a fiscal year basis on the status of Indian education, said report to be presented to the State Board of Education and to the various Indian tribal organizations at the statewide Indian Unity Conference;

(4) To work closely with the Division of Indian Education in the Department of Public Instruction to improve coordination and communication between and among programs;

(5) To advise the State Board of Education on any other aspect of Indian education when requested by the State Board to do so. (1987 (Reg. Sess., 1988), c. 1084, s. 1; 1997-456, s. 27.)

§§ 115C-211 through 115C-214: Reserved for future codification purposes.

Article 14.

Driver Education.

§ 115C-215. Instruction in driver training and safety education.

There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors who meet the requirements established by the State Board of Education. Instructors shall not be required to hold teacher certificates. (1953, c. 1196; 1955, c. 1372, art. 23, s. 4; 1959, c. 573, s. 16; 1981, c. 423, s. 1; 1991, c. 689, s. 32(b).)

CASE NOTES

The driver-training vehicle is a necessary component in driver education courses and must, therefore, be considered as a component of school instructional service rather than school transportation service. Smith v. McDowell County Bd. of Educ., 68 N.C. App. 541, 316 S.E.2d 108 (1984).

§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.

(a) Course of Training and Instruction Required in Public High Schools. — The State Board of Education and local boards of education are required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles, in accordance with G.S. 20-88.1.

(b) Inclusion of Expense in Budget. — The local boards of education of every local school administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

(c) to (f) Repealed by Session Laws 1991, c. 689, s. 32(c). (1955, c. 817; 1965, c. 397; 1981, c. 423, s. 1; 1991, c. 689, s. 32(c).)

CASE NOTES

The driver-training vehicle is a necessary component in driver education courses and must, therefore, be considered as a component of school instructional service rather than school transportation service. Smith v. McDowell County Bd. of Educ., 68 N.C. App. 541, 316 S.E.2d 108 (1984).

§§ 115C-217 through 115C-221: Reserved for future codification purposes.

ARTICLE 15.

North Carolina School of Science and Mathematics.

§§ 115C-222 through 115C-229: Repealed by Session Laws 1985, c. 757, s. 206(a).

Cross References. — As to the North Carolina School of Science and Mathematics, see now G.S. 116-230.1 et seq.

ARTICLE 16.

Optional Programs.

Part 1. Educational Research.

§ 115C-230. Special projects.

Local boards of education are authorized to sponsor or conduct educational research and special projects pursuant to the provisions of G.S. 115C-47(8). (1981, c. 423, s. 1.)

Part 2. Adult Education.

§ 115C-231. Adult education programs; tuition; limitation of enrollment of pupils over 21.

(a) When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the Superintendent of Public Instruction, a course in adult education: Provided, that local boards of education, in their discretion, may institute and support such programs from local funds upon the approval of the State Board of Education.

(b) Tuition shall be free of charge to every person of the State 18 years of age, or over, who has not completed a standard high school course of study.

(c) Unless otherwise assigned by the local board of education, all persons of the district or attendance area who have not completed the prescribed course for graduation in the high school are entitled to attend the schools in the district or attendance area in which they reside: Provided, the superintendent, or the principal with the approval of the superintendent, of the local school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years. (1955, c. 1372, art. 1, s. 1; art. 19, s. 3; art. 23, s. 2; 1963, c. 448, s. 24; 1971, c. 153; c. 704, s. 1; c. 1231, s. 1; 1981, c. 423, s. 1.)

Part 3. Summer Schools.

§ 115C-232. Local financing of summer schools.

Supplementary funds authorized in special tax elections for school purposes may be used to establish and maintain summer schools, as provided in G.S. 115C-501(a). (1981, c. 423, s. 1.)

§ 115C-233. Operation of summer schools.

Each local school administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by local boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by Article 9 of this Chapter, and G.S. 115C-366(b) and 115C-367 to 115C-370. Boards of education of local school administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the local school administrative unit by the tax-levying authority, and from any other revenues available for the purpose. (1975, c. 437, s. 11; 1981, c. 423, s. 1; 2006-69, s. 3(d).)

§§ 115C-234 through 115C-238: Reserved for future codification purposes.

Part 4. Performance-Based Accountability Program.

§§ 115C-238.1 through 115C-238.4: Recodified as §§ 115C-105.20 through 115C-105.35.

Editor's Note. — This Part was recodified as Article 8B of Chapter 115 by Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 2. G.S. 115C-238.5 was previously repealed by Session Laws 1995, c. 450, s. 14, effective July 1, 1995.

§ 115C-238.5: Repealed by Session Laws 1995, c. 450, s. 14.

§§ 115C-238.6 through 115C-238.8: Recodified as G.S. 115C-105.29 through 115C-105.32.

§§ 115C-238.9 through 115C-238.11: Reserved for future codification purposes.

Part 5. Outcome-Based Education Program.

§§ 115C-238.12 through 115C-238.19: Repealed by Session Laws 1995, c. 324, s. 17.2.

§§ 115C-238.20, 115C-238.21: Reserved for future codification purposes.

Part 6. Project Genesis Program.

§§ 115C-238.22 through 115C-238.25: Repealed by Session Laws 1997-18, s. 8.

§§ 115C-238.26 through 115C-238.29: Reserved for future codification purposes.

Part 6A. Charter Schools.

§ 115C-238.29A. Purpose.

The purpose of this Part is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to accomplish all of the following:

(1) Improve student learning;
(2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
(3) Encourage the use of different and innovative teaching methods;
(4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
(5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
(6) Hold the schools established under this Part accountable for meeting measurable student achievement results, and provide the schools with a method to change from rule-based to performance-based accountability systems. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

Charter School Evaluation. — Session Laws 2009-451, s. 7.38(a) and (b), provides: "(a) Of the funds appropriated to State Aid to Local School Administrative Units, up to fifty thousand dollars ($50,000) a year for the 2009-2010 and 2010-2011 fiscal years shall be used by the

North Carolina Center for Public Policy Research, Inc., to evaluate charter schools. In particular, the evaluation shall consider the advantages and disadvantages of North Carolina's method of financing charter school operations, as well as the extent to which charter schools have accomplished the following six objectives, which are set out in G.S. 115C-238.29A:

"(1) Improve student learning;

"(2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;

"(3) Encourage the use of different and innovative teaching methods;

"(4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;

"(5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and

"(6) Hold the schools established under this Part accountable for meeting measurable student achievement results and provide the schools with a method to change from rule-based to performance-based accountability systems.

"(b) The State Board of Education shall report the results of its evaluation to the Joint Legislative Education Oversight Committee and the Fiscal Research Division."

For similar prior provisions, see Session Laws 2007-323, s. 7.16(a) and (b).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 4, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes."

Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

Legal Periodicals. — For North Carolina's approach to educational reform and the use of charter schools, see 79 N.C.L. Rev. 493 (2001).

CASE NOTES

Amount Per Pupil Calculation. — Trial court's determination that the system incorrectly calculated the per pupil local current expense appropriation was correct. If a student attended a charter school, the system was required to transfer to the charter school an amount equal to the per pupil local current expense appropriation contained in the local current expense fund, but the evidence showed that the system failed to so because it failed to allocate funds to the system and the charter schools on the same basis. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school may apply to establish a charter school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

(1) A description of a program that implements one or more of the purposes in G.S. 115C-238.29A.

(2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have at-

tained the skills and knowledge specified for those student achievement goals.

(3) The governance structure of the school including the names of the proposed initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement.

(3a) The local school administrative unit in which the school will be located.

(4) Admission policies and procedures.

(5) A proposed budget for the school and evidence that the financial plan for the school is economically sound.

(6) Requirements and procedures for program and financial audits.

(7) A description of how the school will comply with G.S. 115C-238.29F.

(8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.

(9) The term of the charter.

(10) The qualifications required for individuals employed by the school.

(11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(12) The number of students to be served, which number shall be at least 65, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.

(13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.

(14) Repealed by Session Laws 1997-430, s. 1.

(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

(1) The local board of education of the local school administrative unit in which the charter school will be located;

(2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or

(3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education.

(d) Unless an applicant submits its application under subsection (c) of this section to the local board of education of the local school administrative unit in which the charter school will be located, the applicant shall submit a copy of its application to that local board within seven days of its submission under subsection (c) of this section. The local board may offer any information or comment concerning the application it considers appropriate to the chartering entity. The local board shall deliver this information to the chartering entity no later than January 1 of the next calendar year. The applicant shall not be required to obtain or deliver this information to the chartering entity on behalf of the local board. The State Board shall consider any information or comment it receives from a local board and shall consider the impact on the local school administrative unit's ability to provide a sound basic education to its students when determining whether to grant preliminary and final approval of the charter school. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 1.)

Editor's Note. — Subsection (d) of this section was so designated at the direction of the Revisor of Statutes, the designation in Session Laws 1997-430, s. 1, having been subsection (c1).

§ 115C-238.29C. Preliminary approval of applications for charter schools.

(a) The chartering entity that receives a request for preliminary approval of a charter school shall act on each request received prior to November 1 of a calendar year by February 1 of the next calendar year.

(b) The chartering entity shall give preliminary approval to the application if the chartering entity determines that (i) information contained in the application meets the requirements set out in this Part or adopted by the State Board of Education, (ii) the applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner, and (iii) granting the application would improve student learning and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing applications for the establishment of charter schools within a local school administrative unit, the chartering entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure. If the chartering entity approves more than one application for charter schools located in a local school administrative unit, the chartering entity may state its order of preference among the applications that it approves.

(c) If a chartering entity other than the State Board disapproves an application, the applicant may appeal to the State Board of Education prior to February 15. The State Board shall consider the appeal at the same time it is considering final approval in accordance with G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the application, failed to consider appropriately the application, or failed to act within the time set out in G.S. 115C-238.29C.

If the chartering entity, the State Board of Education, or both, disapprove an application, the applicant may modify the application and reapply subject to the application deadline contained in subsection (a) of this section. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed 10 years each. The State Board of Education shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

It shall not be considered a material revision of a charter application and shall not require the prior approval of the State Board for a charter school to increase its enrollment during the charter school's second year of operation and annually thereafter (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in accordance with planned growth as authorized in the charter. Other enrollment growth shall be considered a material revision of the charter application, and the State Board may approve such additional enrollment growth of greater than ten percent (10%) only if the State Board finds that:

(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;
(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;
(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;
(4) The charter school is not currently identified as low-performing;
(5) The charter school meets generally accepted standards of fiscal management; and
(6) It is otherwise appropriate to approve the enrollment growth. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 3; 2000-67, s. 8.23; 2001-424, s. 28.26; 2003-354, s. 2; 2004-203, s. 45(a).)

Editor's Note. — Session Laws 2001-462, s. 2, provides: "Notwithstanding the time limitation contained in G.S. 135-5.3(b), the board of directors of any charter school that received State Board of Education approval under G.S. 115C-238.29D on or after January 1, 2001, may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes. The election authorized by this section [s. 2 of Session Laws 2001-462] must be made no later than 30 days after the effective date of this Act [Session Laws 2001-462], and in accordance with all other requirements of G.S. 135-5.3."

Session Laws 2003-69, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3(b) and G.S. 135-40.3A(b), the board of directors of any charter school that received State Board of Education approval under G.S. 115C-238.29D on or after January 1, 2002, and the board of directors of River Mill Academy in Alamance County may elect to become a participating employer in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

Subsection (d), as amended by Session Laws 2004-203, s. 45(a)m effective August 17, 2004, is applicable to charters granted or renewed on or after that date. These are the same changes as those made by Session Laws 2003-354, s. 2.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 437.

§ 115C-238.29E. Charter school operation.

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application.

(c) A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 4.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Legislative Intent. — The General Assembly clearly intended for charter schools to be treated as public schools subject to the uniform budget format. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

OPINIONS OF ATTORNEY GENERAL

Activities Limited Prior to Approval of Charter Application. — A charter school applicant may not legally have an enrollment period and conduct its lottery prior to the final approval of its application by the State Board of Education. See opinion of Attorney General to Michael E. Ward, State Superintendent of Public Instruction, 1998 N.C.A.G. 28 (6/23/98).

§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. — A charter school shall meet the same health and safety requirements required of a local school administrative unit. The Department of Public Instruction shall ensure that charter schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information shall be provided at the beginning of the school year to parents of children entering grades five though 12. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide students in grades nine through 12 with information annually on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

The Department of Public Instruction shall also ensure that the guidelines for individual diabetes care plans adopted by the State Board of Education under G.S. 115C-12(31) are implemented in charter schools in which students with diabetes are enrolled and that charter schools otherwise comply with the provisions of G.S. 115C-375.3.

(b) School Nonsectarian. — A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. —

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the charter. Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school.

(d) Instructional Program. —

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with disabilities.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter.

(e) Employees. —

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise

have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees. Employees of a charter school whose board of directors elects to become a participating employer under G.S. 135-5.3 are "teachers" for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. —

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools. These audit requirements may include the requirements of the School Budget and Fiscal Control Act.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. —

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. If multiple birth siblings apply for admission to a charter school and a lottery is needed under G.S. 115C-238.29F(g)(6), the charter school shall enter one surname into the lottery to represent all of the multiple birth siblings. If that surname of the multiple birth siblings is selected, then all of the multiple birth siblings shall be admitted. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. — The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(i) Assets. — Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located.

(j) Driving Eligibility Certificates. — In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions.

(k) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. — A charter school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4; 1998-212, s. 9.14A(a); 1999-243, s. 8; 2001-462, s. 1; 2004-118, s. 3; 2004-203, s. 45(b); 2006-69, s. 3(e); 2006-137, s. 2; 2007-59, s. 2; 2007-126, s. 2; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2009-239, s. 1; 2009-563, s. 2.)

Cross References. — As to state salute to the North Carolina flag, G.S. 144-8.

Editor's Note. — Session Laws 1997-430, s. 12, provides: "The Board of Trustees of the North Carolina Teachers' and State Employees' retirement System through the Office of the Attorney General shall request a letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, as to whether the status of the North Carolina Teachers' and State Employees' Retirement System as a governmental plan would be adversely affected by the participation of employees of charter schools. The request shall be made to the Internal Revenue Service after it is approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate or their designees and no later than 30 days after the effective date of this act. Employees of charter schools are eligible for participation in the North Carolina Teachers' and State Employees' Retirement System upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling."

Session Laws 1997-430, s. 13, provides that G.S. 115C-238.29F(e)(4), as amended by section 5 of the act, is effective the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, under section 12 of the act. The Revisor of Statutes is informed that a favorable letter of determination has been received.

Session Laws 1999-243, s. 10, provides that the State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Session Laws 1999-243, s. 11, provides that the amendments by the act, which added subsection (j), become effective July 1, 2000. Further, the act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. The act shall apply only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct.

Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Subdivision (e)(1), as amended by Session Laws 2004-203, s. 45(b), effective August 17, 2004, is applicable to persons employed by charter schools for the 2004-2005 and subsequent school years.

Session Laws 2007-59, s. 6, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 7, provides: 'This act becomes effective July 1, 2007, and applies beginning with the 2007-2008 school year. However, during the 2007-2008 school year, year-round schools may comply with the provisions of this act by providing the required information no later than September 1, 2007."

Session Laws 2007-323, s. 28.22A(n), provides: "If on July 1, 2008, there are State employees or retired employees that are enrolled in the Teachers' and State Employees' Comprehensive Major Medical Plan (indemnity plan) on June 30, 2008, and that have not elected one of the optional PPO benefit plans available under the State Health Plan for Teachers and State Employees, then the Plan shall enroll those employees or retired employees in the Standard PPO Option, or its equivalent, effective July 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-59, s. 2, effective July 1, 2007, added the second paragraph in subsection (a). See Editor's note for applicability.

Session Laws 2007-126, s. 2, effective June 27, 2007, and applicable beginning with the 2008-2009 school year, added the third paragraph of subsection (a).

Session Laws 2007-323, s. 28.22A(o), as amended by Session Laws 2007-345, s. 12, effective July 1, 2008, substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan" in subdivision (e)(4).

Session Laws 2009-239, s. 1, effective June 30, 2009, and applicable beginning with the 2009-2010 school year, added the fifth and sixth sentences in subdivision (g)(5).

Session Laws 2009-563, s. 2, effective August 28, 2009, and applicable beginning with the 2009-2010 school year, added the last paragraph of subsection (a).

OPINIONS OF ATTORNEY GENERAL

This section requires the board of directors of a nonprofit corporation that holds the charter to retain the authority to approve or disapprove the employment of the teachers whom a "for profit" management company selects to teach at the school. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

This section requires the board to retain the authority to demand removal of a teacher in the case of gross nonperformance or gross misperformance if the management company fails to act upon the board's request to effect a removal in such a circumstance. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

Persons employed and paid by a for-profit management company are not charter school employees and not subject to discharge by a non-profit board of directors; a dissatisfied board's only recourse would be some contractual remedy against the management company. See opinion of Attorney General to The Honorable Wib Gulley North Carolina Senate, 1998 N.C.A.G. 9 (2/12/98).

Teacher Narrowly Construed. — Because the General Assembly intended the term "teacher" as used in subdivision (e)(3) of this section to include only classroom teachers, other school personnel, such as principals, are not entitled to the same leaves of absence granted teachers. See opinion of Attorney General to Douglas S. Punger, 1998 N.C.A.G. 23 (5/5/98).

A five month instructional term does not satisfy the statutory requirement for 180

days of instruction irrespective of the number of instructional hours offered during those months. See opinion of Attorney General to Mr. Brad Sneeden, Deputy Superintendent, North Carolina Department of Public Instruction, 1999 N.C.A.G. 10 (3/15/99).

§ 115C-238.29G. Causes for nonrenewal or termination; disputes.

(a) The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a charter upon any of the following grounds:

(1) Failure to meet the requirements for student performance contained in the charter;
(2) Failure to meet generally accepted standards of fiscal management;
(3) Violations of law;
(4) Material violation of any of the conditions, standards, or procedures set forth in the charter;
(5) Two-thirds of the faculty and instructional support personnel at the school request that the charter be terminated or not renewed; or
(6) Other good cause identified.

(b) The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering entity or the local board of education during the time of its charter.

(c) The State Board and the charter school are encouraged to make a good-faith attempt to resolve the differences that may arise between them. They may agree to jointly select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the differences. The mediator shall, at the request of either the State Board or a charter school, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. The mediator may determine that an impasse exists and discontinue the mediation at any time. The mediator shall not make any recommendations or public statement of findings or conclusions. The State Board and the charter school shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 6.)

CASE NOTES

Dispute Resolution. — While the North Carolina General Statutes provide for the North Carolina Board of Education to establish a process by which disputes between a charter school and a local board of education may be addressed, there is no express language limiting the resolution of such disputes to the process, and G.S. 115C-238.29G(c) expressly encourages resolution by a means other than the process; thus, G.S. 115C-238.29G(c) did not divest a superior court from considering the claims of a group of charter schools that a local board of education had violated G.S. 115C-238.29H(b) by failing to distribute pro rata per pupil moneys to the charter schools out of moneys contained in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school:

(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with disabilities and for the allocation for children with limited English proficiency;

(2) An additional amount for each child attending the charter school who is a child with disabilities; and

(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with disabilities.

(a1) Funds allocated by the State Board of Education may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. However, State funds shall not be used to obtain any other interest in real property or mobile classroom units. No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions. Every contract or lease into which a charter school enters shall include the previous sentence. The school also may own land and buildings it obtains through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only to a charter school located in the tax district for which these taxes are levied and in which the student resides. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 7; 1998-212, s. 9.20(f); 2003-423, s. 3.1; 2006-69, s. 3(f).)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

Effect of Amendments. — Session Laws 2006-69, s. 3.(f), effective July 10, 2006, substituted "disabilities" for "special needs" throughout subsection (a).

CASE NOTES

Taken together, under G.S. 115C-12, 115C-408, and 115C-451, the powers of the North Carolina Board of Education (BOE) are limited to the control, administration, and disbursement of state and federal moneys, while the state superior courts maintain jurisdiction to hear disputes between charter schools and their local boards of education; thus, a superior court and not the BOE had jurisdiction to consider the claim of a group of charter schools that a local board of education and its superintendent had violated G.S. 115C-238.29H(b) by failing to transfer to the charter schools a pro rata share of the per pupil moneys included in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

G.S. 115C-238.29H(b) creates an implied cause of action in favor of charter schools when they allege violation of the mandatory provisions of the statute. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Charter schools had a private right of action against a local board of education (LBE) and its superintendent for their failure to comply with the provisions of G.S. 115C-238.29H(b) regarding the distribution of per pupil moneys in their local current expense fund; the language in the statute regarding the transfer of a pro rata share of LBE's per pupil local current expense appropriation was mandatory and thus required action by the LBE, which created the implied cause of action. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Where a local board of education had a balance carry over, under G.S. 115C-238.29H, the carried over money had to be shared with charter schools within the local board's jurisdiction; fund balance carried over from a previous fiscal year constitutes moneys in a local board of education's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Tax reimbursements received by a local board of education, which were deposited into the local board's local current expense fund, were properly included in a calculation of funds to be shared with a group of charter schools pursuant to G.S. 115C-238.29H. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Meaning of "Local Current Expense Appropriation." — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

Dispute Resolution. — While the North Carolina General Statutes provide for the North Carolina Board of Education to establish a process by which disputes between a charter school and a local board of education may be addressed, there is no express language limiting the resolution of such disputes to the process, and G.S. 115C-238.29G(c) expressly encourages resolution by a means other than the process; thus, G.S. 115C-238.29G(c) did not divest a superior court from considering the claims of a group of charter schools that a local board of education had violated G.S. 115C-238.29H(b) by failing to distribute pro rata per pupil moneys to the charter schools out of moneys contained in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Value of Textbooks Did Not Constitute Moneys in Local Current Expense Fund That Had to be Shared With Charter Schools. — Although, for accounting purposes, the value of textbooks was shown in the annual report of the local current expense fund of a local board of education, because textbooks were loaned to the local board, the local board could not convert that value to its own purposes; thus, the value of the textbooks did not constitute moneys in the local current expense fund that had to be shared with a group of charter schools pursuant to G.S. 115C-238.29H(b). Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

OPINIONS OF ATTORNEY GENERAL

A local school board which is authorized to levy a supplemental tax is obligated to transfer a share of those tax monies collected to a charter school on a per pupil basis as required by this section. See opinion of Attorney General to C. Frank Goldsmith, Jr., Goldsmith, Goldsmith & Dews, P.A., 1998 N.C.A.G. 39 (9/23/98).

A board of county commissioners may not appropriate funds to charter schools for capital outlay projects. See opinion of Attorney General to Thomas B. Griffin, Esq., Griffin & Griffin, 1998 N.C.A.G. 20 (4/15/98).

§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.

(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.

(b) Repealed by Session Laws 1997-18, s. 15(i), effective July 1, 1999.

(c) The State Board of Education shall review and evaluate the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located. The Board shall report no later than January 1, 2002, to the Joint Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. The Board shall base its recommendations predominantly on the following information:

(1) The current and projected impact of charter schools on the delivery of services by the public schools.

(2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation.

(3) Best practices resulting from charter school operations.

(4) Other information the State Board considers appropriate.

(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a charter, (v) make recommendations concerning grievances between a charter school and its chartering entity, the State Board, or a local board, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board.

(e) Notwithstanding the dates set forth in this Part, the State Board of Education may establish an alternative time line for the submission of applications, preliminary approvals, criminal record checks, appeals, and final approvals so long as the Board grants final approval by March 15 of each calendar year. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-18, s. 15(i); 1997-430, ss. 8, 9; 1999-27, s. 1.)

§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to applicants and potential applicants for charters.

(d) The State Board of Education shall direct the Department of Public Instruction to notify the Department of Revenue when the State Board of Education terminates, fails to renew, or grants a charter for a charter school. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 10; 2000-72, s. 3.)

§ 115C-238.29K. Criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:

a. Member of the board of directors of a charter school,

b. Employee of a charter school, or

c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.

(b) The State Board of Education shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G.S. 115C-238.29B. The Board shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The Board may grant conditional approval of an application while the Board is checking a person's criminal history and making a decision based on the results of the check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the criminal history check authorized under this section.

(c) The Board of Education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the State Board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The State Board shall consider refusal to consent when deciding whether to grant final approval of an application under G.S. 115C-238.29D and when making an employment recommendation. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the State Board of Education the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the Board requires a criminal history check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the fingerprints authorized under this section.

(d) The State Board shall review the criminal history it receives on an individual. The State Board shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when deciding whether to grant final approval of an application for a charter school under G.S. 115C-238.29D and for making an employment recommendation to the board of directors of a charter school. The State Board shall make written findings with regard to how it used the information when deciding whether to grant final approval under G.S. 115C-238.29D and when making an employment recommendation.

(e) The State Board shall notify in writing the board of directors of the charter school of the determination by the State Board as to whether the school personnel is qualified to operate or be employed by a charter school based on the school personnel's criminal history. At the same time, the State Board shall provide to the charter school's board of directors the written findings the Board makes in subsection (d) of this section and its employment recommendation. If the State Board recommends dismissal or nonemployment of any person, the board of directors of the charter school shall dismiss or refuse to employ that person. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the State Board shall not release nor disclose any portion of the school personnel's criminal history to the charter school's board of directors or employees. The State Board also shall notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the personnel's right to contest the State Board's determination in court.

(f) All the information received by the State Board of Education or the charter school in accordance with subsection (e) of this section through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the State Board of Education or the board of directors of the charter school. The State Board of Education or the board of directors of the charter school may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the State Board of Education or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes. (1997-430, s. 2.)

Part 7. Extended Services Programs.

§ 115C-238.30. Purpose.

The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as a guide, local school administrative units are encouraged to provide timely assistance to students who are at risk of school failure through the extended services programs described in this Part. (1993, c. 132, s. 1.)

§ 115C-238.31. Extended services programs.

(a) Local school administrative units are encouraged to implement extended services programs that will expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. Extended services programs may be incorporated into school improvement plans developed in accordance with G.S. 115C-105.27. Calendar alternatives include, but are not limited to, after-school hours, before-school hours, evening school, Saturday school, summer school, and year-round school. Instructional programming may include, but is not limited to, tutoring, direct instruction, enrichment activities, study skills, and reinforcement projects.

(b) Extended services programs shall be targeted primarily toward students who perform significantly below their age-level peers; however, these programs may be established for students who are achieving at or above grade level.

(c) Extended services programs should be accelerated and based on needs assessments of the students in the program. The programs shall build on, and be fully integrated with, existing classroom and school activities.

(d) Extended services programs may be based in schools, collaboratively between schools, or in other community-based locations. (1993, c. 132, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 24.)

§ 115C-238.32. Needs assessment; community-based collaboration.

(a) Before implementing an extended services program, the local school administrative unit shall conduct a needs assessment within the unit and in collaboration with local governmental and nongovernmental agencies to identify students, schools, and communities that need extended services. The needs assessment shall include an evaluation of existing school and community resources and programs and shall identify how instruction in the core curriculum could be improved to meet the needs of children at risk of school failure.

(b) Goals and expected outcomes for the program shall be based on the needs assessment. (1993, c. 132, s. 1.)

§ 115C-238.33. Plan for effective use of fiscal resources; comprehensive plan to implement extended services programs.

(a) The State Board of Education shall develop model plans which show how to (i) deliver comprehensive extended services; (ii) effectively use all fiscal resources, including federal funds, and other resources under its control that support the goals of this Part; and (iii) maintain quality program evaluation. The model plans shall be communicated to local units and building-level committees.

(b) Repealed by Session Laws, 1997-18, c. 15(j). (1993, c. 132, s. 1; 1997-18, s. 15(j).)

§§ 115C-238.34 through 115C-238.39: Reserved for future codification purposes.

Part 8. Intervention/Prevention Grant Program for North Carolina School Children.

§§ 115C-238.40 through 115C-238.47: Repealed by 1995, c. 450, s. 16.

Part 9. Cooperative Innovative High School Programs.

§ 115C-238.50. Purpose.

(a) The purpose of this Part is to authorize local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and colleges or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall target:

(1) High school students who are at risk of dropping out of school before attaining a high school diploma; or

(2) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

(1) Prepare students adequately for future learning in the workforce or in an institution of higher education.

(2) Expand students' educational opportunities within the public school system.

(3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.

(4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and colleges or universities, or both.

(5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.

(6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.

(7) Be held accountable for meeting measurable student achievement results.

(8) Encourage the use of different and innovative teaching methods.

(9) Establish joint institutional responsibility and accountability for support of students and their success.

(10) Effectively utilize existing funding sources for high school, college, university, and vocational programs and actively pursue new funding from other sources.

(11) Develop methods for early identification of potential participating students in the middle grades and through high school.

(12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.

(c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:

(1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.

(2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.

(3) Set and achieve goals that significantly reduce dropout rates and raise high school and college retention, certification, and degree completion rates.

(4) Enable students who complete these programs to pass employer exams, if applicable.

(d) Cooperative innovative high school programs that offer accelerated learning programs shall:

(1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.

(2) Enable students to obtain a high school diploma in less than four years, to begin or complete an associate degree program, to master a certificate or vocational program, or to earn up to two years of college credit.

(3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.

(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on the campus of a college or university.

(f) Students are eligible to attend these programs as early as ninth grade. (2003-277, s. 2; 2005-276, s. 7.33(a).)

Cross References. — As to First in America Innovative Education Initiatives Act, see G.S. 116C-4.

Learn and Earn High Schools. — Session Laws 2007-323, s. 7.19(a)-(i), provide as follows:

"(a) Funds are appropriated in this act for the Learn and Earn high school workforce development program. The purpose of the program is to create rigorous and relevant high school options that provide students with the opportunity and assistance to earn an associate degree or two years of college credit by the conclusion of the year after their senior year in high school. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"(b) These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers.

"Funds shall not be allotted until Learn and Earn high schools are certified as operational.

"(c) During the first year of its operation, a high school established under G.S. 115C-238.50 shall be allotted a principal regardless of the number of State-paid teachers assigned to the school or the number of students enrolled in the school. The budget flexibility authorized by G.S. 115C-105.25 does not apply to these positions.

"(d) The State Board of Education, in consultation with the State Board of Community Colleges and The University of North Carolina Board of Governors, shall conduct an annual evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; (ii) recommended statutory and policy changes; and (iii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each fiscal year.

"(e) Enrollment fees and tuition for The University of North Carolina courses in which Learn and Earn students are enrolled are allowable uses of these funds. Tuition costs may include laboratory fees assessed to all students enrolled in the course or a similar course.

"(f) Textbooks required for college courses in which Learn and Earn students are enrolled may be purchased with these funds.

"(g) Payment of fees from these funds by local school administrative units to partnering community colleges and universities are restricted to technology or course fees. Funds appropriated in this act shall not be used to support the cost of athletic or other student activity or campus fees not required by enrollment in a specific course.

"(h) The State Board of Education shall allot funds for university enrollment, tuition and fees, and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in university courses. The State Board of Education shall allot funds for community college fees and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in community college courses.

"(i) Of the funds appropriated to the State Public School Fund for the 2007-2008 fiscal year, the State Board of Education may use up to eight hundred fifty thousand dollars ($850,000) to establish additional Learn and Earn high schools that become certified as operational."

For similar prior provisions, see 2005-276, s. 7.32, as amended by 2005-345, s. 6(a) and by 2006-66, s. 7.11.

Learn and Earn Online. — Session Laws 2009-451, s. 7.10(a)-(h), provides: "(a) Funds are appropriated in this act for the Learn and Earn Online program. This program will allow high school students to enroll in college courses to qualify for college credit. Online courses shall be made available to students through The University of North Carolina and the North Carolina Community College System.

"(b) Funds shall be used for:

"(1) Course tuition and only those technology and course fees and textbooks required for course participation; and

"(2) A liaison position in the Department of Public Instruction to coordinate with The University of North Carolina and the North Carolina Community College System and to communicate course availability and related information to high school administrators, teachers, and counselors.

"(c) The State Board of Education shall determine the allocation of Learn and Earn Online course offerings across the State.

"(d) The State Board of Education shall allot funds for tuition, fees, and textbooks on the basis of and after verification of the credit hour enrollment of high school students in Learn and Earn Online courses. The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office for courses offered by community colleges.

"(e) The University of North Carolina program shall report to The University of North Carolina Board of Governors, and the North Carolina Community College program shall report to the State Board of Community Colleges. The Department of Public Instruction shall report to the State Board of Education.

"(f) Both The University of North Carolina and the North Carolina Community College System shall provide oversight and coordination, including coordination with the Department of Public Instruction and with the North Carolina Virtual Public School (NCVPS), to avoid course duplication.

"(g) The programs shall establish course quality and rigor standards and shall conduct course evaluations to ensure that the online courses meet the established standards.

"(h) Local school administrative units may purchase textbooks for Learn and Earn Online courses through the Department of Public Instruction's textbook warehouse in the same manner as textbooks that have been adopted for public school students by the State Board of Education."

For similar provisions, see Session Laws 2007-323, s. 7.27(a)-(i).

Session Laws 2009-451, s. 7.10(j), provides: "For the 2009-2011 biennium, high school students attending a nonpublic school may enroll in any Learn and Earn Online course with space available that has been offered to but not filled by any eligible public school student. Notwithstanding subsection (h) of this section, nonpublic school students shall be responsible for supplying their own textbooks and other instructional materials."

Session Laws 2009-451, s. 7.10(k), provides: "Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert but shall remain available for expenditure."

For similar provisions, see Session Laws 2008-107, s. 7.5.

Session Laws 2009-451, s. 7.10(*l*), provides: "Subsection (k) of this section becomes effective June 30, 2009."

Cooperative Innovative High School Programs. — Session Laws 2005-276, s. 7.33(b), provides: "It is the intent of the General Assembly that three cooperative innovative high school programs are established that emphasize the educational development of high school students in the areas of science and mathematics in a nonresidential setting. One of these programs shall be located in the eastern region of the State, one shall be located in the central region of the State, and one shall be located in the western region of the State. The State Board of Education shall begin planning for the design and implementation of these programs and shall report their plan to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by March 15, 2006.

"The plan shall include, but not be limited to, the following aspects of the proposed programs:

"(1) Programmatic design including location, curriculum, student access, and calendar.

"(2) Projected costs of operation, including instructional, administrative, transportation, capital, and other costs.

"(3) Any plans for coordination with institutes of higher education.

"(4) Proposed implementation schedule."

NC Virtual Public School Program. — Session Laws 2009-451, s. 7.9(a)-(g), provides: "(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

"(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

"(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

"(d) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

"The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

"The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

"(e) The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

"(1) The General Fund appropriation for NCVPS;

"(2) Available American Recovery and Reinvestment Act of 2009 funds; and

"(3) Up to six million dollars ($6,000,000) from the School Technology appropriation.

"(f) NCVPS shall only provide high school courses.

"(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

"If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education."

For similar prior provisions, see Session Laws 2005-276, s. 7.41(a)-(e), 2006-66, s. 7.16(a)-(e), and Session Laws 2007-323, s. 7.20(a)-(f), as amended by Session Laws 2008-107, s. 7.4(a).

Small Specialty High Schools Pilot Program. — Session Laws 2005-276, ss. 7.52(a) and (b), provide: "(a) Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006."

Session Laws 2007-323, s. 7.21, provides: "The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee no later than January 15 of each year on the results of its evaluation of the small, restructured high school program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program."

Editor's Note. — Session Laws 2003-277, s. 3, provides: "Local school administrative units and the State Board of Education shall identify, strengthen, and adopt policies and procedures that encourage students to remain in high school rather than to drop out and that encourage all students to pursue a rigorous academic course of study. As part of this process, the State Board and the local school administrative units are encouraged to eliminate or revise any policies or procedures that discourage some students from completing high school or that discourage any student from pursuing a rigorous academic course of study. No later than March 1, 2004, local school administrative units shall report to the State Board of Education the policies they have identified, strengthened, adopted, and eliminated under this section. No later than April 15, 2004, the State Board shall report to the Joint Legislative Education Oversight Committee on these policies as well as on the policies the Board has identified, strengthened, adopted, and eliminated under this section."

Session Laws 2003-277, s. 4, provides: "Nothing in this act shall be construed to obligate the General Assembly to make appropriations to implement this act."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 115C-238.50A. Definitions.

The following definitions apply in this Part:

(1) Constituent institution. — A constituent institution as defined in G.S. 116-2(4).

(2) Education partner. — An education partner as provided in G.S. 115C-238.52.

(3) Governing board. — The State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.

(4) Local board of trustees. — The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina. (2005-276, s. 7.33(a).)

§ 115C-238.51. Application process.

(a) A local board of education and at least one local board of trustees shall jointly apply to establish a cooperative innovative high school program under this Part.

(b) The application shall contain at least the following information:

(1) A description of a program that implements the purposes in G.S. 115C-238.50.

(2) A statement of how the program relates to the Economic Vision Plan adopted for the economic development region in which the program is to be located.

(3) The facilities to be used by the program and the manner in which administrative services of the program are to be provided.

(4) A description of student academic and vocational achievement goals and the method of demonstrating that students have attained the skills and knowledge specified for those goals.

(5) A description of how the program will be operated, including budgeting, curriculum, transportation, and operating procedures.

(6) The process to be followed by the program to ensure parental involvement.

(7) The process by which students will be selected for and admitted to the program.

(8) A description of the funds that will be used and a proposed budget for the program. This description shall identify how the average daily membership (ADM) and full-time equivalent (FTE) students are counted.

(9) The qualifications required for individuals employed in the program.

(10) The number of students to be served.

(11) A description of how the program's effectiveness in meeting the purposes in G.S. 115C-238.50 will be measured.

(c) The application shall be submitted to the State Board of Education and the applicable governing Boards. The Boards shall appoint a joint advisory committee to review the applications and to recommend to the Boards those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50.

(d) The Boards may approve programs recommended by the joint advisory committee or may approve other programs that were not recommended. The Boards shall approve all applications by June 30 of each year. No application shall be approved unless the State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located. (2003-277, s. 2; 2005-276, s. 7.33(a); 2005-345, ss. 6(b), 6(c).)

§ 115C-238.52. Participation by other education partners.

(a) Any or all of the following education partners may participate in the development of a cooperative innovative program under this Part that is targeted to high school students who would benefit from accelerated academic instruction:

(1), (2) Repealed by Session Laws 2005-276, s. 7.33(a), effective July 1, 2005.
(3) A private business or organization.
(4) The county board of commissioners in the county in which the program is located.

(b) Any or all of the education partners listed in subsection (a) of this section that participate shall:

(1) Jointly apply with the local board of education and the local board of trustees to establish a cooperative innovative program under this Part.
(2) Be identified in the application.
(3) Sign the written agreement under G.S. 115C-238.53(b). (2003-277, s. 2; 2005-276, s. 7.33(a).)

§ 115C-238.53. Program operation.

(a) A program approved by the State is accountable to the local board of education.

(b) A program approved under this Part shall operate under the terms of a written agreement signed by the local board of education, local board of trustees, State Board of Education, and applicable governing Board. The agreement shall incorporate the information provided in the application, as modified during the approval process, and any terms and conditions imposed on the program by the State Board of Education and the applicable governing Board. The agreement may be for a term of no longer than five school years.

(c) A program may be operated in a facility owned or leased by the local board of education, the local board of trustees, or the education partner, if any.

(d) A program approved under this Part shall provide instruction each school year for at least 180 days during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter.

(e) A program approved under this Part may use State, federal, and local funds allocated to the local school administrative unit, to the applicable governing Board, and to the college or university to implement the program. If there is an education partner and if it is a public body, the program may use State, federal, and local funds allocated to that body.

(f) Except as provided in this Part and under the terms of the agreement, a program may be exempted by the applicable governing Board from laws and rules applicable to a local board of education, a local school administrative unit, a community college, a constituent institution, or a local board of trustees. (2003-277, s. 2; 2005-276, s. 7.33(a).)

§ 115C-238.54. Funds for programs.

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this Part. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code. Notwithstanding G.S. 115C-105.25, once funds are assigned to that school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

(b) The local board of trustees may allocate State and federal funds for a program that is approved under this Part.

(c) An education partner under G.S. 115C-238.52 that is a public body may allocate State, federal, and local funds for a program that is approved under this Part.

(d) If not an education partner under G.S. 115C-238.52, a county board of commissioners in a county where a program is located may nevertheless appropriate funds to a program approved under this Part.

(e) The local board of education and the local board of trustees are strongly encouraged to seek funds from sources other than State, federal, and local appropriations. They are strongly encouraged to seek funds the Education Cabinet identifies or obtains under G.S. 116C-4. (2003-277, s. 2; 2005-276, s. 7.33(a).)

§ 115C-238.55. Evaluation of programs.

The State Board of Education and the governing Boards shall evaluate the success of students in programs approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, and employer satisfaction of employees who participated in and graduated from the programs. The Boards shall jointly report by January 15 of each year to the Joint Legislative Education Oversight Committee on the evaluation of these programs. (2003-277, s. 2; 2005-276, s. 7.33(a); 2009-305, s. 3.)

Effect of Amendments. — Session Laws 2009-305, s. 3, effective July 17, 2009, substituted "The Boards shall jointly report by January 15 of each year" for "Beginning October 15, 2005, and annually thereafter, the Boards shall jointly report" in the present last sentence, and deleted the former last two sentences, which read: "If, by October 15, 2006, the Boards determine any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the State. This plan shall be included in their report to the Joint Legislative Education Oversight Committee that is due by October 15, 2007."

§§ 115C-238.56 through 115C-238.59: Reserved for future codification purposes.

ARTICLE 17.

Supporting Services.

Part 1. Transportation.

§ 115C-239. Authority of local boards of education.

Each local board of education is hereby authorized to acquire, own, lease, contract and operate school buses for the transportation of pupils enrolled in the public schools of such local school administrative unit, and of persons employed in the operation of such schools in accordance with rules and regulations adopted by the State Board of Education under the authority of G.S. 115C-12(17) and within the limitations set forth in G.S. 115C-239 to 115C-246, 115C-248 to 115C-254 and 115C-256 to 115C-259. Boards of education which own and operate school buses for the transportation of pupils shall have authority to establish separate systems of transportation for pupils attending elementary schools and for pupils attending middle schools, junior high schools, or senior high schools. Each such board may operate such buses to and from such of the schools within the local school administrative unit, and in such number, as the board shall from time to time find practicable and appropriate for the safe, orderly and efficient transportation of such pupils and employees to such schools. (1955, c. 1372, art. 21, s. 1; 1973, c. 586, s. 1; 1981, c. 423, s. 1; 1983, c. 630, s. 2; 2001-97, s. 3.)

Cross References. — As to liability insurance and waiver of immunity as to certain acts of bus drivers, see G.S. 115C-255. As to liability insurance and tort liability for actions arising out of activities conducted pursuant to this Part, see G.S. 115C-262. As to claims against county and city boards of education for accidents involving school buses or school transportation service vehicles, see G.S. 143-300.1.

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Chapter 115.*

State Board Relieved of Responsibility. — The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of the statute, which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

A city board is not required to transport pupils living in the city and attending schools located therein, even though transportation to those same schools is furnished pupils living outside the city. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Relief from Providing Transportation Not Construed as Prohibition Against Providing It. — Subsection (e) of former G.S. 115-186 (see now subsection (e) of G.S. 115C-246) merely relieves the city boards of any duty to provide transportation and cannot be construed as a prohibition against providing it — especially in the face of former G.S. 115-180 (now this section), which grants to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

A city board of education is authorized, without limitation, to transport all pupils residing within the unit. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The school boards have the power to use school buses for all legitimate school purposes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Use of School Buses to Promote Desegregation of Schools. — School buses can be used by the school boards to provide the flexibility and economy necessary to desegregate the schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Transportation of Students Under Desegregation Plan Retaining Freedom of Choice. — If freedom of choice is retained in a desegregation plan, it should include provision for free transportation for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Transportation of School Bands and Athletic Teams. — School bands and athletic teams are under the control of school authorities. Therefore, the board controlling such activities would have the inherent right to contract for such transportation as might be necessary to transport its athletic teams and its bands to and from such events as have been scheduled under the supervision of school authorities. State ex rel. N.C. Utils. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

§ 115C-240. Authority and duties of State Board of Education.

(a) The State Board of Education shall promulgate rules and regulations for the operation of a public school transportation system.

(b) The State Board of Education shall be under no duty to supply transportation to any pupil or employee enrolled or employed in any school. Neither the State nor the State Board of Education shall in any manner be liable for the failure or refusal of any local board of education to furnish transportation, by school bus or otherwise, to any pupil or employee of any school, or for any neglect or action of any county or city board of education, or any employee of any such board, in the operation or maintenance of any school bus.

(c) The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. Every school bus that is capable of operating on diesel fuel shall be capable of operating on diesel fuel with a minimum biodiesel concentration of B-20, as defined in G.S. 143-58.4. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing stoplight on the front of the bus, an alternating flashing stoplight on the rear of the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

(d) The State Board of Education shall assist local boards of education by establishing guidelines and a framework through which local boards may establish, review and amend school bus routes prepared pursuant to G.S. 115C-246. The State Board shall also require local boards to implement the Transportation Information Management System or an equivalent system approved by the State Board of Education, no later than September 1, 1992. The State Board of Education shall also assist local boards of education with reference to the acquisition and maintenance of school buses or any other question which may arise in connection with the organization and operation of school bus transportation systems of local boards.

(e) The State Board of Education shall allocate to the respective local boards of education funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State. Such funds shall be allocated by the State Board of Education in accordance with the number of pupils to be transported, the length of bus routes, road conditions and all other circumstances affecting the cost of the transportation of pupils by school bus to the end that the funds so appropriated may be allocated on a fair and equitable basis, according to the needs of the respective local school administrative units and so as to provide the most efficient use of such funds. Such allocation shall be made by the State Board of Education at the beginning of each fiscal year, except that the State Board may reserve for future allocation from time to time within such fiscal year as the need therefor shall be found to exist, a reasonable amount not to exceed ten percent (10%) of the total funds available for transportation in such fiscal year from such appropriation. If there is evidence of inequitable or inefficient use of funds, the State Board of Education shall be empowered to review school bus routes established by local boards pursuant to G.S. 115C-246 as well as other factors affecting the cost of the transportation of pupils by school bus.

(f) The respective local boards shall use such funds for the purposes of replacing, maintaining, insuring, and operating public school buses and service vehicles in accordance with the provisions of G.S. 115C-239 to 115C-246, 115C-248 to 115C-254 and 115C-256 to 115C-259 and for no other purpose, but in the making of expenditures for such purposes shall be subject to rules and regulations promulgated by the State Board of Education. (1955, c. 1372, art. 21, p. 2; 1981, c. 423, s. 1; 1983, c. 630, ss. 3-6; 1989 (Reg. Sess., 1990), c. 1066, s. 96(a); 1991 (Reg. Sess., 1992), c. 900, s. 77(a); 2007-423, s. 1.)

Effect of Amendments. — Session Laws 2007-423, s. 1, effective June 1, 2008, and applicable to vehicles transferred or purchased on or after that date, added the second sentence in subsection (c).

CASE NOTES

Editor's Note. *— The case annotated below was decided under corresponding provisions of former Chapter 115.*

As to limit on authority and control by State Board, see Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

State Board Not Responsible for Operation of School Buses. — The General Assembly has relieved the State Board of all responsibility for the operation of school buses. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The State Board does not authorize the transportation of any pupils. It allocates available funds to those boards which elect to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

State Board to Allocate Funds. — The State Board is authorized and directed to allocate, without restriction, the funds appropriated for transportation during the school year to the boards of education which have elected to provide school bus transportation. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Burden of Producing Evidence That Board Failed to Make Allocations. — The burden is upon plaintiffs to produce evidence that the State Board has failed to make the allocations required. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115C-241. Assignment of school buses to schools.

The superintendent of the schools of each local school administrative unit which shall elect to operate a school bus transportation system, shall, prior to the commencement of each regular school year and subject to the approval of the local board of education, allocate and assign to the respective public schools within the jurisdiction of such local school administrative unit the school buses which the local board shall own and direct to be operated during such school year. From time to time during such school year, subject to the directions of the local board of education, the superintendent may revise such allocation and assignment of school buses in accordance with the changing transportation needs and conditions at the respective schools of such local school administrative unit, and may, pursuant to such revision, assign an additional bus or buses to a school or withdraw a bus or buses from a school in such local school administrative unit. (1955, c. 1372, art. 21, s. 3; 1981, c. 423, s. 1.)

Cross References. — As to exemption of vehicles other than buses from construction requirements, see G.S. 115C-253.

§ 115C-242. Use and operation of school buses.

Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:

(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program or any More at Four program may be transported on public school buses, and any additional costs associated with such contractual arrangements shall be incurred by the benefitting Head Start or More at Four program: Provided further, that children with disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

(2) In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.

(3) The board of education of any local school administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.

(4) A local board of education which elects to operate a school bus transportation system, shall not be required to provide transportation for any school employee, nor shall such board be required to provide transportation for any pupil living within one and one half miles of the school in which such pupil is enrolled.

(5) Local boards of education, under rules adopted by the State Board of Education, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with disabilites, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with disabilities may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide those children with a free appropriate public education.

(6) School buses owned by a local board of education may be used for emergency management purposes in any state of disaster or local state of emergency declared under Chapter 166A of the General Statutes. Under rules and regulations adopted by a local board of education, its school buses may be used with its permission for the purpose of testing emergency management plans; however, neither the State Board of Education nor the local board of education shall be liable for the operating cost, any compensation claims or any tort claims resulting from the test.

(7) Uses authorized by G.S. 115C-243. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47; 1973, c. 869; 1977, c. 830, ss. 2, 3; 1977, 2nd Sess., c. 1280, s. 2; 1979, c. 885; 1981, c. 423, s. 1; 1983, c. 630, s. 7; c. 768, s. 8; 1987, c. 827, s. 49; 2006-66, s. 7.18(i); 2006-69, s. 3(g).)

Cross References. — As to maximum speed for school buses, see G.S. 20-218.

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 115C-243. Use of school buses by senior citizen groups.

(a) Any local board of education may enter into agreements with the governing body of any county, city, or town, or with any State agency, or any agency established or identified pursuant to Public Law 89-73, Older Americans Act of 1965, to provide for the use of school buses to provide transportation for the elderly.

(b) Each agreement entered into under this section must provide the following:

(1) That the board of education shall be reimbursed in full for the proportionate share of any and all costs, both fixed and variable, of such buses attributable to the uses of the bus pursuant to the agreement.

(2) That the board of education shall be held harmless from any and all liability by virtue of uses of the buses pursuant to the agreement.

(3) That adequate liability insurance is maintained under G.S. 115C-42 to insure the board of education, and that adequate insurance is maintained to protect the property of the board of education. The minimum limit of liability insurance shall not be less than the maximum amount of damages which may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said insurance shall be paid by the agency contracting for the use of the bus, either directly or through the fee established by the agreement.

(c) Before any board of education shall enter into any agreement under this section, it must by resolution establish a policy for use of school buses by the elderly. The policy must give first priority to school uses under G.S. 115C-242 and 115C-42. The resolution must provide for a schedule of charges under this section. Such resolution, if adopted, shall be amended or readopted at least once per year to provide for adjustments to the schedule of charges or to provide for maintaining the same schedule of charges. If the price bid for the service by a private bus carrier is less than the schedule of charges adopted by the board of education, then the board of education may not enter into the agreement.

(d) No board of education shall be under any duty to sign any agreement under this section.

(e) No bus operated under the provisions of this section shall travel outside of the area consisting of the county or counties where the local board of education is located and the county or counties contiguous to that county or counties, but not outside of the State of North Carolina.

(f) Before any agreement under this section may be signed, the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. (1977, 2nd Sess., c. 1280, s. 1; 1981, c. 423, s. 1; 1983, c. 717, s. 92; 1985 (Reg. Sess., 1986), c. 955, ss. 17, 18; 2006-203, s. 32.)

Cross References. — As to use of activity buses, see G.S. 115C-247.

§ 115C-244. Assignment of pupils to school buses.

(a) The superintendent or superintendent's designee shall assign the pupils and employees who may be transported to and from school upon the bus or buses assigned to each school and shall implement and enforce the plan developed under G.S. 115C-246. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the superintendent or superintendent's designee, except by the express direction of the superintendent or superintendent's designee.

(b) In the event that the superintendent or superintendent's designee assigns a school bus to be used in the transportation of pupils to two or more schools, the superintendent or superintendent's designee shall assign the pupils to be transported to and from each school by that bus, and the principals of the respective schools shall implement and enforce this assignment of pupils.

(c) Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation of such pupil to and from such school by school bus for the regularly organized school day. The principal shall deliver the application to the superintendent or superintendent's designee, who shall assign a pupil to a school bus if the pupil is entitled to school bus transportation under this Article and the rules of the State Board of Education. Such assignment shall be made by the superintendent or superintendent's designee so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the superintendent or superintendent's designee as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

(d) The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply under subsection (c) of this section for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the local board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

(e) A decision of a local board under subsection (d) is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the superintendent or superintendent's designee, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus. (1955, c. 1372, art. 21, s. 5; 1981, c. 423, s. 1; 1987, c. 827, ss. 47, 48; 1998-220, s. 3.)

Cross References. — As to assignment of students to school buses, see G.S. 115C-372.

OPINIONS OF ATTORNEY GENERAL

Discharge of School Children from School Bus at Day-Care Center. — See opinion of Attorney General to Mr. D.P. Whitley, Jr., 41 N.C.A.G. 788 (1972), rendered under former Chapter 115.

§ 115C-245. School bus drivers; monitors; safety assistants.

(a) Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must be at least 18 years old and have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the superintendent or superintendent's designee shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned to such bus except by the express direction of the superintendent or superintendent's designee or in accordance with rules and regulations of the appropriate local board of education.

(b) The driver of a school bus subject to the direction of the superintendent or superintendent's designee shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

(c) The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the superintendent or superintendent's designee to ride thereon.

(d) The superintendent or superintendent's designee may, in his discretion, appoint a monitor for any bus assigned to any school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the local board of education for the safety of pupils and employees upon school buses. Such monitors shall be unpaid volunteers who shall serve at the pleasure of the superintendent or superintendent's designee.

(e) A local board of education may, in its discretion within funds available, employ transportation safety assistants upon recommendation of the principal through the superintendent. The safety assistants thus employed shall assist the bus drivers with the safety, movement, management, and care of children boarding the bus, leaving the bus, or being transported in it. The safety assistant should be either an adult or a certified student driver who is available as a substitute bus driver. (1955, c. 1372, art. 21, s. 6; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1; 1987, c. 276; 1989, c. 558, s. 2; 1998-220, s. 4.)

Cross References. — As to standard qualifications of school bus drivers, see G.S. 20-218. As to funds for payment of transportation safety assistants, see G.S. 115C-250.

CASE NOTES

Sufficiency of Cause of Action. — Trial court properly dismissed assault victims' negligence claim against youth program operators, which was based on the alleged acts of a school bus monitor and driver in not reporting a conversation between two teenagers on the bus that they would rob someone with a gun, because the victim failed to show that a special relationship existed between defendants and the juveniles such that defendants had control and custody over them at the time of the shooting. Stein v. Asheville City Bd. of Educ., 168 N.C. App. 243, 608 S.E.2d 80, 2005 N.C. App. LEXIS 263 (2005), reh'g denied, 360 N.C. 546, 635 S.E.2d 58 (2006).

§ 115C-246. School bus routes.

(a) The superintendent of the local school administrative unit shall, prior to the commencement of each regular school year, prepare a plan for a definite route, including stops for receiving and discharging pupils, for each school bus so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent may, in his discretion, obtain the advice of the State Board of Education with reference to the plan. The buses shall be operated upon the route so established and not otherwise, except as provided in this Article. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the local school administrative unit.

(b) Unless road or other conditions make it inadvisable, public school buses shall be routed on state-maintained highways, municipal streets, or other streets with publicly dedicated right-of-way. The local board of education shall not be responsible for damage to the roadway. Each public school bus shall be routed so that the bus passes within one mile of the residence of each pupil assigned to that bus. A pupil who lives one and one-half miles or more from the school to which the pupil is assigned shall be eligible for school bus transportation.

(c) All bus routes when established pursuant to this section shall be filed in the office of the board of education of the local school administrative unit, and all changes made therein shall be filed in the office of such board within 10 days after such change shall become effective.

(d) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(e) No provision of this Article shall be construed to place upon the State, or upon any county or city, any duty to supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15; 1963, c. 990, ss. 2, 3; 1965, c. 1095, ss. 2, 3; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 827, s. 49; 1989 (Reg. Sess., 1990), c. 1066, s. 96(b); 2005-151, s. 1.)

CASE NOTES

***Editor's Note.** — The cases below were decided under corresponding provisions of former Chapter 115.*

Constitutionality. — Subsection (e) of former G.S. 115-186, similar to subsection (e) of this section, was plainly constitutional. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

The distinction between county and city pupils, created by subsection (e) of former G.S. 115-186, was a constitutionally valid one. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Subsection (e) of former G.S. 115-186 was wholly reasonable. The State legislature could reasonably have concluded that transportation was more imperative for county students than for city students. The degree of urbanization of the entire State has not yet become so pronounced that the legislature might not reasonably conclude that city students have easier access than do county students to public transportation, that they are more apt to have sidewalks and other pedestrian protections on their way to school, and that they are more apt to participate in an "automobile" culture simplifying family transportation and the formation of carpools, than their county-dwelling counterparts. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

The transportation of pupils who live outside the city limits in which the school they attend is located does not impose a correlative duty to transport pupils who live within the city and attend the same school. This classification is entirely reasonable, since ordinarily school children can obtain both private and public transportation more easily in the cities than in rural areas. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Whether it would be better and fairer to abolish the city-county distinction and go to a measured-distance-from-school basis is a political question for the people and their legislative representatives. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

There is no "duty" to provide transportation to city pupils attending in-city schools. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

A city board is not required to transport pupils living in the city and attending schools located therein, even though transportation to those same schools is furnished pupils living outside the city. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

But Boards Are Not Forbidden to Supply Funds for Intra-City Transportation. — Subsection (e) of former G.S. 115-186 (similar to subsection (e) of this section) did not forbid either the State Board or local boards to supply funds for the intra-city transportation of pupils. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Subsection (e) of former G.S. 115-186, which merely relieved the city boards of any duty to provide transportation, could not be construed as a prohibition against providing it, especially in the face of former G.S. 115-180 (see now G.S. 115C-239), which granted to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Students Residing More Than One and One-Half Miles from School. — Former G.S. 115-186 (similar to this section) required the provision of transportation for all students who were assigned to schools more than one and one-half miles from their homes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554, rehearing denied, 403 U.S. 912, 91 S. Ct. 2200, 29 L. Ed. 2d 689 (1971).

Local school authorities could be required to employ bus transportation as one tool of school desegregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554, rehearing denied, 403 U.S. 912, 91 S. Ct. 2200, 29 L. Ed. 2d 689 (1971).

§ 115C-247. Purchase of activity buses by local boards.

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses.

Each local board of education that operates activity buses shall adopt a policy relative to the proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic events during the regular season and playoffs and for travel to other school-sponsored activities.

The provisions of G.S. 115C-42 shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1; 2006-208, s. 1.)

Editor's Note. — Session Laws 2006-208, s. 2, provides: "The Department of Public Instruction, in cooperation with the Department of Transportation, shall develop a program for issuing a statewide permit to commercial motor coach companies that seek to contract with local school systems for the transportation of students, school personnel, and other persons authorized by the school system for school-sponsored trips. This program is intended to provide commercial motor coach companies with a single permit that can be used statewide and will be an alternative to the current system that requires motor coach companies to meet the varying requirements of each school system that they contract with for such transportation services. The Department of Public Instruction shall review and amend the recommended guidelines and procedures for school charter transportation, adopted by the School Charter Transportation Safety Committee in December 2004, to meet the requirements of the new permit program.

"The requirements of the program shall include, but not be limited to, all of the following:

"(1) The motor coach company demonstrates compliance with the Federal Motor Carrier Safety Regulations (FMCSR) as evidenced by a prior on-site examination of its motor carrier operation in which the company received a safety fitness rating of "satisfactory" in accordance with 49 C.F.R. Part 385.

"(2) The previously issued "satisfactory" safety rating is current at the time the local board of education contracts for services.

"(3) The motor coach company has not had an out-of-service order issued against it within the prior 12 months.

"(4) The requirement that the motorcoach companies adhere to the motor vehicle laws of the jurisdiction in which they are operating.

"(5) The collection of a reasonable fee to offset the costs of implementing and maintaining the program.

"(6) The consideration of the needs of schools that serve large populations of students with special needs.

"The Department of Public Instruction, in establishing the program, shall consult with the North Carolina State Highway Patrol, the North Carolina School Boards Association, the Federal Motor Carrier Safety Administration, the North Carolina Motorcoach Association, the North Carolina PTA, and other interested parties to discuss the proposed requirements of the program.

"The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by November 15, 2006, on development of the program. The Committee shall report its findings, together with any recommended legislation, including the amount of any reasonable fees, to the 2007 General Assembly upon its convening."

Session Laws 2007-465, ss. 1 through 7, provide: "1. Legislative Findings. — The General Assembly makes the following findings:

"(1) Diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of North Carolina, including increased risk of cancer, decreased lung function, aggravated asthma, heart attacks, and premature death.

"(2) The United States Environmental Protection Agency, recognizing the harmful effects of diesel emissions, issued new fuel and engine emission standards that will reduce particulate matter emissions from new engines ninety percent (90%) below previous levels, beginning with vehicle model year 2007.

"(3) The same technology that makes ninety percent (90%) reductions in diesel emissions possible for new engines can be retrofitted onto existing engines.

"(4) The Safe Accountable, Flexible, Efficient Transportation Equity Act — A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144, 23 U.S.C. § 149, clarified eligibility for diesel matter retrofit projects from federal congestion mitigation and air quality improvement program funds apportioned to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and establishes those projects as a priority for funding. North Carolina should act now to position itself to maximize eighty percent (80%) federal matching dollars available through this program as provided in 23 U.S.C. § 120.

"2. (a) Pilot Program to Retrofit Certain School Buses. — The Department of Environment and Natural Resources, in consultation with the Department of Public Instruction, the Department of Transportation, and stakeholders, shall develop a pilot program, to be administered by the Department of Environment and Natural Resources, to award grants to retrofit school buses in order to reduce diesel emissions from school buses in any county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter. A local school administrative unit may submit an application to the Department of Environment and Natural Resources for a grant to have any eligible school bus retrofitted in order to utilize an appropriate verified diesel emission control device as determined by the Department of Environment and Natural Resources. A school bus is eligible to have a diesel retrofit using grant funds if the school bus: (i) has a model year 1994 through model year 2006 engine; (ii) is registered in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter; (iii) is capable of operating on diesel fuel and; (iv) is used for the transportation of public school students. The Department of Environment and Natural Resources may adopt guidelines and engineering standards as needed to implement this act. The Department of Environment and Natural Resources shall develop grant application procedures, the criteria and priorities for selecting grant recipients and further selection of which school buses of these grant recipients may use grant funds for diesel retrofits under this pilot program, and procedures for distribution of grant funds and federal-aid funds reimbursed under Section 7 of this act to a local school administrative unit selected as a grant recipient. The criteria that may be considered in grant recipient selection includes the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus. Priority designation for selection of school buses for retrofits using grant funds may be given for a diesel retrofit that results in the greatest particulate matter reduction, considering the costs of operating, maintaining, and repairing the verified diesel emission control device, for the longest remaining useful life of the school bus.

"(b) Definitions. — As used in this act, the following definitions apply:

"(1) Diesel retrofit. — Defined in Chapter 149 of Title 23 of the United States Code.

"(2) Level 1 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of twenty-five percent (25%) or more but less than fifty percent (50%) from uncontrolled engine emissions levels.

"(3) Level 2 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of fifty percent (50%) or more but less than eighty-five percent (85%) from uncontrolled engine emissions levels.

"(4) Level 3 Control. — A verified diesel emission control device that achieves a particulate matter emission reduction of eighty-five percent (85%) or more from uncontrolled engine emission levels, or that reduces emissions to less than or equal to 0.01 grams of particulate matter per brake horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine with an engine that meets the United States Environmental Protection Agency 2007 Heavy Duty Highway Diesel Standards set out in the Final Rule published on 18 January 2001 in the Federal Register, Volume 66, Number 12, Pages 5002 through 5193. Level 3 Control also includes new diesel engines for the 2007 model year or later that meet the emissions standards that achieve particulate matter emissions reductions that are ninety percent (90%) less than particulate matter emissions standards for diesel engines in the 2006 model year.

"(5) Verified diesel emission control device. — An emission control device or strategy that has been verified by the United States Environmental Protection Agency or the California Air Resources Board; the replacement or repowering of the vehicle with an engine that is certified to specific particulate matter emissions performance by the United States Environmental Protection Agency or the California Air Resources Board; or a device that reduces crankcase emissions by ninety percent (90%) or more from uncontrolled crankcase emissions levels, whether or not the device is verified by United States Environmental Protection Agency or the California Air Resources Board as an emission control device or strategy.

"(c) Appropriate Retrofit Technology. — Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 3 Control, and that the category may use grant funds to be retrofitted with Level 2 Control, if it is available and appropriate for the category, installed, and operational. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 2 Control, and that the category may use grant funds to be retrofitted with Level 1 Control, if it is available and appropriate for the category, installed, and operational. The Secretary of Environment and Natural Resources may require additional emissions control to be used for those school buses retrofitted with Level 1 Control using grant funds. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding regarding: the comparative economic impact, health benefits, and technological feasibility of using Level 1 Control, Level 2 Control, Level 3 Control, or other verified diesel emission control device under this pilot program; which device results in the greatest emissions reductions, considering the cost of operating, maintaining, and repairing the devices over their anticipated useful life; recommendations regarding the appropriate verified diesel emission control device to be used for retrofits under this pilot program consistent with these findings. In addition to any other issues of retrofit technology considered when making any finding under this subsection, the Secretary of Environment and Natural Resources and the Department of Public Instruction may consider the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus.

"(d) Coordination Among Departments. — The Department of Environment and Natural Resources shall coordinate with the Department of Public Instruction, the Department of Transportation, and the Department of Administration to determine if the effective and efficient implementation of this pilot program requires any of these departments to have a role beyond any role specified in this act, and if so, the Department of Public Instruction, the Department of Transportation, and the Department of Administration, as applicable, may adopt guidelines and engineering standards as needed to implement this section. The Department of Transportation may amend its Transportation Improvement Program and otherwise satisfy any other requirement under federal law so that school bus retrofits under this pilot program qualify for reimbursement of federal-aid funds as provided under Section 6 of this act.

"3. (a) School Bus Diesel Emissions Reduction Account Established. — The School Bus Diesel Emissions Reduction Account is established as a nonreverting account within the Department of Environment and Natural Resources. The Account shall consist of funds appropriated to it by the General Assembly and any contributions or grants from public or private sources.

"(b) Permissible Uses of the School Bus Diesel Emissions Reduction Account. — The Department of Environment and Natural Resources shall distribute funds in the School Bus Diesel Emissions Reduction Account as grants to local school administrative units for retrofitting school buses under this pilot program. The distributed funds shall be in an amount that is equal to twenty percent (20%) of the costs of purchasing a diesel retrofit for each school bus selected for retrofitting, based upon the costs of purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. The funds shall be used by the local school unit to match the federal-aid funds that are to be reimbursed under Section 6 of this act, provided the Metropolitan Planning Organization for the area in which that local school administrative unit seeking grant funds under this pilot program has amended its Transportation Improvement Program and has otherwise satisfied any requirement under federal law so that the diesel retrofit as it applies to this local school administrative unit qualifies for reimbursement of federal-aid funds as provided under Section 6 of this act. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of the sum of the twenty-percent (20%) share the local school administrative unit received in grant funds under this section for each diesel retrofit and the eighty-percent (80%) share in federal-aid funds for each diesel retrofit. Costs associated with any school bus retrofit in excess of this sum, if any, shall be borne by the local school administrative unit that operates the school bus. Any funds in the School Bus Diesel Emissions Reduction Account that have not been used or obligated as of 1 July 2008 in accordance with this section may be used to make grants to local school administrative units for one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources, and excess costs associated with any school bus retrofit, if any, shall be borne by the local school administrative unit that operates the school bus.

"(c) Prohibited Uses of the School Bus Diesel Emissions Reduction Account. — Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any school bus with tampered, nonconforming, or defective emission control components.

"4. (a) Transfer of Information. — On or before 1 August 2008, the Department of Public Instruction shall submit to the Department of Environment and Natural Resources the following information:

"(1) The total number of school buses that are eligible for grants under Section 2(a) of this act.

"(2) The number of school buses that are equipped with an engine certified to the applicable United States Environmental Protection Agency standard for particulate matter as set out in 40 Code of Federal Regulations §§ 86.007-11 (1 July 2006 Edition).

"(b) Annual Report Required. — On or before 1 September 2008, and again on or before 1 September 2009, the Department of Environment and Natural Resources shall submit a report to the Department of Public Instruction, the Department of Transportation, and the Environmental Review Commission on the pilot program under this act. This report shall include the information submitted under subsection (a) of this section and shall also include:

"(1) The total number of school buses that have the retrofit technology installed and operational under this pilot program, including a breakdown by location, vehicle model year, engine year, and the type of verified diesel emission control device used for each school bus.

"(2) The anticipated emissions reductions based on the emissions certification of the verified diesel emission control devices used and the annual miles the school buses are expected to drive.

"(3) Any recommendations to further reduce diesel emissions from school buses and whether the program to retrofit certain school buses registered in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter is accomplishing its purpose to reduce diesel emissions, improve air quality, and protect students' health.

"(4) The feasibility and the cost of expanding the funding for this pilot program for all eligible school buses for local school administrative units in counties that are located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter.

"(5) The feasibility and the cost of expanding this pilot program statewide.

"5. Credit for Emissions Reductions. — The Department of Environment and Natural Resources shall work together with federal, State, and local air quality and transportation agencies to determine how emissions reductions achieved through implementation of this act may be quantified and credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the State Implementation Plan or Transportation Conformity determinations."

"6. Reimbursement of Federal-Aid Funds. — The Department of Transportation may reimburse up to two million dollars ($2,000,000) for the 2007-2008 fiscal year from the federal congestion mitigation and air quality improvement program funds apportioned to the State of North Carolina by the United States pursuant to 23 U.S.C. § 104(b)(2), to the Department of Environment and Natural Resources for the costs of purchasing diesel retrofits for school buses under the pilot program under this act. This reimbursement may provide the eighty percent (80%) in federal-aid funds, as provided in 23 U.S.C. § 120, for the costs of purchasing diesel retrofits for school buses to supplement the funds awarded as grants under Section 3(b) of this act. The Department of Transportation and the Department of Environment and Natural Resources may enter into a contract that provides for the terms and method by which the Department of Environment and Natural Resources bills the Department of Transportation for reimbursement of eligible costs of purchasing diesel retrofits for school buses and submits itemized invoices with proper supporting documentation. This contract may provide a reimbursement schedule.

"7. Effective Dates. — Section 6 of this act becomes effective 1 July 2007, and the remainder of this act is effective when this act becomes law, but Sections 1 through 6 of this act become effective only if the 2007 General Assembly appropriates funds for the 2007-2008 fiscal year to the School Bus Diesel Emissions Reduction Account established in Section 3(a) of this act to be used for grants to local school administrative units for the purchase of diesel retrofits for school buses consistent with the pilot program under this act."

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-248. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

(a) The superintendent of each local school administrative unit, shall cause each school bus owned or operated by such local school administrative unit to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed promptly in the office of the superintendent of such local school administrative unit, and a copy thereof shall be forwarded to the principal of the school to which such bus is assigned.

(b) It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the local school administrative unit. It shall be the duty of the superintendent of the local school administrative unit to cause any and all such defects to be corrected promptly.

(c) If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the local school administrative unit, to be so defective that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective.

(d) The superintendent of each local school administrative unit, shall cause each activity bus which is used for the transportation of students by such local school administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of the local school administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity bus as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State funds for the purchase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474; 1975, c. 150, s. 2; 1981, c. 423, s. 1.)

§ 115C-249. Purchase and maintenance of school buses, materials and supplies.

(a) To the extent that the funds shall be made available to it for such purpose, a local board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such local school administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of this Article and by the regulations of the State Board of Education issued pursuant thereto. Any school bus so purchased that is capable of operating on diesel fuel shall be capable of operating on diesel fuel with a minimum biodiesel concentration of B-20, as defined in G.S. 143-58.4. At least two percent (2%) of the total volume of fuel purchased annually by local school districts statewide for use in school bus diesel engine motor vehicles shall be biodiesel fuel of a minimum blend of B-20, to the extent that biodiesel blend is available and compatible with the technology of the vehicles or equipment used.

(b) The tax-levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective local boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective local boards of education in accordance with such allocation.

(d) The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such local school administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this Article in the same manner as any other public school bus.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the board of education of any local school administrative unit in such county. It shall be the duty of the tax-levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the local school administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such local school administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such local school administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such local school administrative unit for such purpose.

(g) Repealed by Session Laws 2003-147, s. 3, effective for a local school administrative unit when the unit is certified as being E-Procurement compliant, or April 1, 2004, whichever occurs first.

(h) Appropriations by the General Assembly for the purchase of public school buses shall not revert to the General Fund. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16; 1975, c. 879, s. 46; 1981, c. 423, s. 1; 1987, c. 827, s. 49; 1991 (Reg. Sess., 1992), c. 1039, s. 24; 2003-147, s. 3; 2004-203, s. 72(b); 2007-423, s. 2.)

Certification as E-Procurement Compliant. — Session Laws 2003-147, ss. 10(a) through (e) contains provisions encouraging local school administrative units to use the NC E-Procurement Service for their purchasing requirements. See same catchline in note to G.S. 115C-522.

Session Laws 2003-147, s. 11, provides: "Nothing in this act [giving local boards of education additional purchasing flexibility and encouraging them to use the NC E-Procurement Service] shall be construed to limit the authority of the Department of Administration to develop, implement, and monitor a pilot program for reverse auctions for public school systems as provided in Section 3 of Chapter 107 of the 2002 Session Laws."

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [s. 3 provided for the repeal of subsection (g)] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Replacement School Bus Funds. — Session Laws 2009-451, s. 7.5, provides: "(a) The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

"(1) The local board of education shall use the funds only to make the first, second, third, or fourth year's payment on a financing contract entered into pursuant to G.S. 115C-528.

"(2) The term of a financing contract entered into under this section shall not exceed four years.

"(3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.

"(4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.

"(5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.

"(6) Any other condition the State Board of Education considers appropriate.

"(b) Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service."

For similar prior provisions, see Session Laws 2002-126, s. 7.14, Session Laws 2005-276, s. 7.17(a), (b), and Session Laws 2007-323, s. 7.14(a) and (b).

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Editor's Note. — Session Laws 2005-276, s. 1.2 provides as follows: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2005."

Session Laws 2005-276, s. 46.3 provides as follows: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 provides as follows: "If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-423, s. 2, effective June 1, 2008, and applicable to vehicles transferred or purchased on or after that date, added the last two sentences in subsection (a).

§ 115C-250. Authority to expend funds for transportation of children with disabilities.

(a) The State Board of Education and local boards of education may expend public funds for transportation of children with disabilities who are unable because of their disability to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide these children with a free appropriate education under Article 9 of this Chapter. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of children with disabilities may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules concerning the construction and equipment of these buses and minibuses.

The Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of children with disabilities who are unable because of their disability to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide these children with a free appropriate public education under Article 9 of this Chapter.

If a local area mental health center places a child with a disability in an educational program, the local area mental health center shall pay for the transportation of the child who is unable due to the disability to ride the regular school buses to the program.

(b) Funds appropriated for the transportation of children with disabilities may be used to pay transportation safety assistants employed in accordance with G.S. 115C-245(e) for buses to which children with disabilities are assigned. (1955, c. 1372, art. 21, s. 6; 1973, c. 1351, s. 1; 1975, c. 678, ss. 9, 10; 1977, c. 830, s. 1; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1; c. 912, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 31; 1985, c. 479, s. 26(b); 1987, c. 769; 1997-443, s. 11A.118(a); 1998-202, s. 4(n); 2000-137, s. 4(q); 2006-69, s. 3(h).)

§ 115C-251. Transportation supervisors.

The State Board of Education shall from time to time adopt such rules and regulations with regard to the qualifications of persons employed by local boards of education as chief mechanic or supervisor of transportation as it shall deem necessary or desirable for the purpose of assuring the proper maintenance and safety of school buses. A local board of education shall not employ any person as chief mechanic or supervisor of transportation if that person does not meet the qualifications established by the State Board. (1977, c. 314; 1981, c. 423, s. 1.)

§ 115C-252. Aid in lieu of transportation.

(a) When, by reason of road conditions or otherwise, any local board of education, which shall elect to operate a school bus transportation system, shall find it impracticable to furnish to a pupil transportation by school bus to the school in which such pupil is enrolled, or to which such pupil is assigned, the board may assign such pupil to such other school within such local school administrative unit as the board shall deem advisable, unless the parent or guardian of such pupil or the person standing in loco parentis to such pupil, shall notify the principal of the school, in which such pupil is enrolled or to which such pupil is assigned, of the desire of such pupil to continue to attend such school without the benefit of transportation by school bus.

(b) In the event that any local board of education, which shall operate a system of school bus transportation, shall find it impracticable to furnish to a pupil such transportation to the school in which such pupil is enrolled or to which such pupil is assigned, and if, as a result thereof, such pupil shall be required to obtain board and lodging at a place other than the residence of such pupil in order to attend a school, such board may, in its discretion, provide for the payment to the parent or guardian of such pupil of a sum not to exceed fifty dollars ($50.00) per month for each school month that such pupil shall so obtain board and lodging at a place other than the residence of the pupil for the purpose of attending a school. (1955, c. 1372, art. 21, s. 10; 1973, c. 932; 1981, c. 423, s. 1.)

§ 115C-253. Contracts for transportation.

Any local board of education may, in lieu of the operation by it of public school buses, enter into a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such local school administrative unit for the same purposes for which such local school administrative unit is authorized by this Article to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in rules and regulations promulgated by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by rules and regulations promulgated by the State Board of Education. Where a contract for transportation of pupils is entered into between a local board of education and any person, firm or corporation which contemplates the use of an automobile or vehicle other than a bus for the transportation of 16 pupils or less, the automobile or vehicle shall not be required to be constructed and equipped as provided for in G.S. 115C-240(c), but shall be constructed and equipped pursuant to rules and regulations promulgated by the State Board of Education. In the event that any local board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax-levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11; 1975, c. 382; 1981, c. 423, s. 1; 1987, c. 827, ss. 49, 50; 2007-423, s. 3.)

Plans for Statewide Motor Coach Permit. — Session Laws 2009-451, s. 7.29(a)-(d), provides: "(a) The State Board of Education, in conjunction with the Division of Motor Vehicles, shall develop a plan for a Statewide permit for commercial motor coach companies that seek to contract with local school systems to transport students, school personnel, and other persons authorized by the school system on school-sponsored trips. The purpose of the permit shall be (i) to ensure student safety, (ii) to ensure safe operations by motor coach companies, (iii) to minimize paperwork, (iv) to minimize visits to the motor coach companies by local school systems, and (v) to minimize the need for motor coach companies to respond to multiple requests for information from multiple local school systems.

"(b) In developing the plan for a permit, the State Board of Education and the Division of Motor Vehicles shall consult with the North Carolina School Boards Association, the State Highway Patrol, the North Carolina Pupil Transportation Association, the North Carolina Motor Coach Association, the Federal Motor Carrier Safety Administration, and other interested parties.

"(c) The components of the plan shall include, but not be limited to, all of the following:

"(1) Scope of the permit.

"(2) Standards for issuing the permit.

"(3) Duration of the permit.

"(4) Process for required inspections.

"(5) Entity to conduct required inspections.

"(6) Conditions for revoking the permit.

"(7) Renewal process.

"(8) Schedule of fees to cover the cost of implementation and administration.

"(9) Application form and other required documentation.

"(10) Dissemination of current permit holders to school systems.

"(11) Estimate of costs to implement and number of new positions required.

"(12) Impact on motor coach companies that have interstate operations.

"(13) Other related issues.

"(d) The State Board of Education and the Division of Motor Vehicles shall consult on the proposed plan to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 2010. Before the plan is implemented, the Commission shall make any recommendations, including proposed legislation, to the 2009 General Assembly in 2010."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-423, s. 3, effective June 1, 2008, and applicable to vehicles transferred or purchased on or after that date, divided the former second sentence into the present second and third sentences by substituting "State Board of Education. Where" for "State Board of Education: Provided that where."

§ 115C-254. Use of school buses by State militia or national guard.

When requested to do so by the Governor, the board of education of any local school administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State Defense Militia or the National Guard for the purpose of transporting members of the State militia [or] members of the National Guard to and from authorized places of encampment, or to and from places to which members of the State militia or members of the National Guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any local school administrative unit to the North Carolina State Defense Militia or the National Guard shall be operated by members or employees of the State militia or National Guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State militia or the National Guard. (1955, c. 1372, art. 21, s. 12; 1981, c. 423, s. 1; 1999-456, s. 33(e); 2009-281, s. 1.)

Editor's Note. — The word "or" has been inserted in brackets in the first sentence of this section to reflect the apparent intent of the General Assembly.

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" throughout this section.

§ 115C-255. Liability insurance and waiver of immunity as to certain acts of bus drivers.

The securing of liability insurance and the waiver of immunity as to certain torts of school bus drivers, school transportation service vehicle drivers and school activity bus drivers, is subject to the provisions of G.S. 115C-42, except when such vehicles are operated with funds from the State Public School Fund. (1981, c. 423, s. 1.)

Cross References. — As to liability insurance and tort liability of local boards for actions arising out of activities conducted pursuant to this Part, see G.S. 115C-262. As to claims against county and city boards of education for accidents involving school buses or school transportation service vehicles, see G.S. 143-300.1.

§ 115C-256. School bus drivers under Workers' Compensation Act.

Awards to school bus drivers under the Workers' Compensation Act shall be made pursuant to the provisions of G.S. 115C-337(b). (1981, c. 423, s. 1.)

§ 115C-257. Attorney General to pay claims.

The Attorney General is hereby authorized to pay reasonable medical expenses, not to exceed three thousand dollars ($3,000), incurred within one year from the date of accident to or for each pupil who sustains bodily injury or death caused by accident, while boarding, riding on, or alighting from a school bus operated by any local school administrative unit. (1955, c. 1372, art. 22, s. 1; 1981, c. 423, s. 1; c. 576, s. 1; 1998-212, s. 9.17(a).)

§ 115C-258. Provisions regarding payment.

The claims authorized herein may be paid, regardless of whether the injury received by the pupil was due to negligence on the part of the school bus driver, the injured pupil, or any other person. To the extent of payments made under this Article, the Attorney General shall be subrogated to the right of the pupil against any third party legally responsible for the injury. Further, any amounts paid shall constitute a credit against any obligation arising under the provisions of the Tort Claims Act. (1955, c. 1372, art. 22, s. 2; 1981, c. 423, s. 1; c. 576, s. 1.)

§ 115C-259. Claims must be filed within one year.

The right to payment as authorized herein shall be forever barred unless a claim be filed with the Attorney General within one year after the accident. (1955, c. 1372, art. 22, s. 3; 1981, c. 423, s. 1; c. 576, s. 1.)

§§ 115C-260, 115C-261: Repealed by Session Laws 1981, c. 576, s. 2.

§ 115C-262. Liability insurance and tort liability.

Liability insurance and tort liability of local boards of education for actions arising out of activities conducted pursuant to this Part, are subject to the provisions of G.S. 115C-42. (1981, c. 423, s. 1.)

Cross References. — As to liability insurance and waiver of immunity as to certain acts of bus drivers, see G.S. 115C-255. As to claims against county and city boards of education for accidents involving school buses or school transportation service vehicles, see G.S. 143-300.1.

Part 2. Food Service.

§ 115C-263. Required provision of services.

As a part of the function of the public school system, local boards of education shall provide to the extent practicable school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the Superintendent of Public Instruction and approved by the State Board of Education. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1.)

CASE NOTES

Cited in Lindler v. Duplin County Bd. of Educ., 108 N.C. App. 757, 425 S.E.2d 465 (1993).

§ 115C-264. Operation.

(a) In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Support, Child Nutrition Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture.

(b) For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

(c) All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" means the actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" means child nutrition supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Child nutrition personnel shall be paid from the funds of food services only for services rendered in behalf of the child nutrition program. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 78; 2003-147, s. 5; 2004-124, s. 7.29(a); 2004-203, ss. 72(a), (b); 2005-253, s. 1.)

Certification as E-Procurement Compliant. — Session Laws 2003-147, s. 10(a) through (e) contains provisions encouraging local school administrative units to use the NC E-Procurement Service for their purchasing requirements. See same catchline in note to G.S. 115C-522.

Healthful School Food Choices/Pilot Program. — Session Laws 2004-124, ss. 7.17(a) and (b), provide: "(a) The State Board of Education, with the advice and assistance of The North Carolina School Food Service Association and the Academy of Family Physicians, shall develop and implement a pilot program to support the efforts of local school administrative units to provide only healthful, nutritious food choices to students. The State Board of Education shall select up to eight local school administrative units to participate in the pilot program and shall set standards for the food choices offered to students. In selecting the eight pilot units, the State Board shall give priority to those units that volunteer to be a pilot. The pilots shall be distributed geographically throughout the State. For the 2004-2005 school year, pilot units shall implement the program in elementary schools.

"(b) If, at the end of the 2004-2005 school year, the State Board of Education finds that a pilot unit experienced a decrease in food service revenues because students opted not to purchase the healthful, nutritious food choices offered by the school food service, the State Board shall reimburse the unit for that decrease in revenues."

Editor's note. — Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-457, s. 2, provides: "The State Board of Education may use 'Eat Smart: North Carolina's Recommended Standards for All Foods Available in School' and the 'United States Dietary Guidelines' as references for establishing the nutrition standards under Section 1 of this act. In addition to the elementary school pilots established by Section 7.17 of S.L. 2004-124, the nutrition standards will also be piloted prior to statewide implementation in a minimum of eight middle schools and eight high schools at a time to be determined by the State Board of Education. The pilots shall be conducted in a manner that will hold the child nutrition program of a participating local school administrative unit financially harmless for its participation in the pilot project. It shall be the responsibility of the Child Nutrition Services Section of the Department of Public

Instruction to oversee the pilot project, collect data from the pilots, interpret the data, and develop written guidance based on the outcomes of the pilots. The Child Nutrition Services Section of the Department of Public Instruction shall modify the nutrition standards as needed based on several criteria, including, but not limited to, the results of the pilot projects, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages. The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. The Child Nutrition Services Section of the Department of Public Instruction shall report annually on the progress of each local school administrative unit to the State Board of Education and to the Joint Legislative Education Oversight Committee."

This section, as rewritten by Session Laws 2005-253, s. 1, effective August 1, 2005, and applicable to contracts for vending services executed or renewed on after that date.

§ 115C-264.1. Preference to high-calcium foods and beverages in purchasing contracts.

(a) In addition to any requirements established by the United States Department of Agriculture under the National School Lunch Program, the School Breakfast Program, or other federally supported food service programs, local boards of education shall give preference in purchasing contracts to high-calcium foods and beverages. For purposes of this section, "high-calcium foods and beverages" means foods and beverages that contain a higher level of calcium and that are equal to or lower in price than other products of the same type or quality.

(b) Notwithstanding the provisions of subsection (a) of this section, if a local school board determines that a high-calcium food or beverage would interfere with the proper treatment and care of an individual receiving services from the public school food program, the local school board shall not be required to purchase a high-calcium food or beverage for that individual. A local school board that has entered into a contract with a supplier to purchase food or beverages before the effective date of this section is not required to purchase high-calcium foods or beverages for the duration of that contract if purchasing those products would change the terms of the contract. (2003-257, s. 1.)

§ 115C-264.2. Vending machine sales.

(a) Each school may, with the approval of the local board of education, sell to students beverages in vending machines during the school day so long as:

(1) Soft drinks are not sold (i) during the breakfast and lunch periods, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program;

(2) Sugared carbonated soft drinks, including mid-calorie carbonated soft drinks, are not offered for sale in middle schools;

(3) Not more than fifty percent (50%) of the offerings for sale to students in high schools are sugared carbonated soft drinks;

(4) Diet carbonated soft drinks are not considered in the same category as sugared carbonated soft drinks; and

(5) Bottled water products are available in every school that has beverage vending.

(b) Nothing in subsection (a) of this section prohibits a school from adopting stricter policies with respect to beverage vending.

(c) Snack vending in all schools shall, by school year 2006-2007, meet the Proficient Level of the NC Eat Smart Nutrition Standards, such that in elementary schools, no snack vending is available to students, and in middle and high schools, seventy-five percent (75%) of snack vending products have not more than 200 calories per portion or snack vending package. (2005-253, s. 2.)

§ 115C-264.3. Child Nutrition Program standards.

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2009-2010 school year, followed by middle schools and then high schools. (2005-457, s. 1; 2007-323, s. 7.36A(a); 2008-107, s. 7.25(a).)

Editor's Note. — Session Laws 2005-457, s. 2, provides: "The State Board of Education may use 'Eat Smart: North Carolina's Recommended Standards for All Foods Available in School' and the 'United States Dietary Guidelines' as references for establishing the nutrition standards under Section 1 of this act. In addition to the elementary school pilots established by Section 7.17 of S.L. 2004-124, the nutrition standards will also be piloted prior to statewide implementation in a minimum of eight middle schools and eight high schools at a time to be determined by the State Board of Education. The pilots shall be conducted in a manner that will hold the child nutrition program of a participating local school administrative unit financially harmless for its participation in the pilot project. It shall be the responsibility of the Child Nutrition Services Section of the Department of Public Instruction to oversee the pilot project, collect data from the pilots, interpret the data, and develop written guidance based on the outcomes of the pilots. The Child Nutrition Services Section of the Department of Public Instruction shall modify the nutrition standards as needed based on several criteria, including, but not limited to, the results of the pilot projects, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages. The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. The Child Nutrition Services Section of the Department of Public Instruction shall report annually on the progress of each local school administrative unit to the State Board of Education and to the Joint Legislative Education Oversight Committee."

Session Laws 2007-323, s. 7.36A(b)-(d), provides: "(b) Local education agencies are encouraged to take steps to implement within existing funds and to the extent possible the nutrition program standards under G.S. 115C-264.3 by the end of the 2007-2008 school year.

"(c) The Child Nutrition Services Section of the Department of Public Instruction, in direct consultation with a cross section of local directors of child nutrition services, shall study how State funds allocated to support the implementation of nutrition standards in elementary schools should be distributed to ensure fair and equitable distribution of available resources. The Child Nutrition Services Section shall report its findings and recommendations to the Joint Legislative Education Oversight Committee during the 2008 Regular Session of the General Assembly.

"(d) The General Assembly urges the Director of the State Budget to include in the proposed Continuation Budget the amount required to ensure that all kindergarten students in schools that meet the eligibility percentage authorized by the State Board of Education receive a free breakfast.

"The State Board shall not adjust that eligibility percentage below thirty-nine and four one-hundredths of one percent (39.04%) unless the General Assembly funds an expansion of the program."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 7.25(b), provides: "Local school administrative units are encouraged to take steps to implement within existing funds and to the extent possible the nutrition program standards under G.S. 115C-264.3 by the end of the 2008-2009 school year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 7.25(a), effective July 1, 2008, substituted "2009-2010" for "2008-2009" near the end of the section.

Part 3. Library/Media Personnel.

§ 115C-265. Rules and regulations for distribution of library/media personnel funds; employment of personnel.

(a) The State Board of Education is authorized to promulgate rules and regulations for the distribution of library/media personnel funds, on the basis of average daily membership (ADM), to each local school administrative unit of the State.

(b) Each local school administrative unit in the State shall employ library/media personnel in accordance with State library/media guidelines approved by the State Board of Education insofar as funds are approved for that purpose by the North Carolina General Assembly. (1977, c. 1088, ss. 2, 3; 1981, c. 423, s. 1.)

§§ 115C-266 through 115C-270: Reserved for future codification purposes.

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-271. Selection by local board of education, term of office.

(a) It is the policy of the State that each local board of education has the sole discretion to elect a superintendent of schools. However, the State Board shall adopt rules that establish the qualifications for election. At a minimum, each superintendent shall have been a principal in a North Carolina public school or shall have other leadership, management, and administrative experience. In addition, the State Board shall adopt rules that include minimum credentials, educational prerequisites, and relevant experience requirements that would qualify a person to serve as a superintendent without having direct experience or certification as an educator. It is the duty of each local board to elect a superintendent who is qualified. If a local board elects a superintendent who is not qualified or who cannot qualify under this section, then the election and contract are null and void, and the board shall elect a person who is qualified.

(b) Each local board of education shall elect a superintendent under a written contract of employment for a term of no more than four years, ending on June 30 of the final months of the contract. Contracts of employment for a period of less than one year shall be governed and limited by G.S. 115C-275. Each local board shall file a copy of the contract with the State Board of Education before the individual is eligible for this office.

(c) At any time after the first 12 months of the contract, a local board may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract for a term of no more than four years from the date of the extension. If new board members have been elected or appointed and are to be sworn in, a board shall not act to extend or renew the current superintendent's contract until after the new members have been sworn in.

(d) A local board may terminate the superintendent's contract before the contract term of employment has expired so long as all the following conditions are met:

(1) No State funds are used for this purpose.
(2) Local funds appropriated for teachers, textbooks, or classroom materials, supplies, and equipment are not transferred or used for this purpose.
(3) The local board makes public the funds that are to be transferred or used for this purpose.
(4) The local board notifies the State Board of the funds that are to be transferred or used for this purpose.
(5) No funds acquired through donation or fund-raising are used for this purpose, except for funds raised specifically for this purpose or for funds donated by private for-profit corporations.

Immediately upon receipt of the notification from a local board under this subsection, the State Board shall review the accounts of that local school administrative unit. If the State Board finds that the local board failed to meet all the conditions set out in this subsection, the State Board shall issue a warning to the local board as provided in G.S. 115C-451 and, in addition to any other actions the State Board may take under G.S. 115C-451, shall order the local board to take action to comply with this subsection. (1981, c. 423, s. 1; 1983, c. 478; 1983 (Reg. Sess., 1984), c. 1103, s. 3; 1987, c. 389; 1989, c. 339; 1991, c. 238, s. 1; 1997-443, s. 8.7; 2001-174, s. 1.)

Local Modification. — (As to Article 18) Edgecombe: 1991, c. 404, s. 4(e).

CASE NOTES

Renewal of Superintendents' Contract. — Pursuant to the amendment to this section by Session Laws 1989, c. 339, s. 1, applicable to all superintendent contracts extended or renewed by local boards of education since July 1, 1985, which clarified legislative intent regarding renewal of superintendents' contracts under this section, the board of education was free to renew its superintendent's contract at any time during the final 12 months of the contract, since no new members were to take office during that period. Rivenbark v. Pender County Bd. of Educ., 94 N.C. App. 703, 381 S.E.2d 183 (1989).

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

No Error in Dismissal of Claims Against Superintendent. — Trial court did not err in dismissing plaintiffs' claims against superintendent; although plaintiffs alleged superintendent's representations to both defendant boards "were grossly overstated" and "without foundation in fact," plaintiffs did not allege superintendent was in a decision-making position as to acquisition of the Square D facility. As a matter of law, a superintendent does not vote on appropriations. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Cited in Gunter v. Anders, 114 N.C. App. 61, 441 S.E.2d 167; Guilford County Bd. of Comm'rs v. Trogdon, 124 N.C. App. 741, 478 S.E.2d 643 (1996).

§ 115C-272. Residence, oath of office, and salary of superintendent.

(a) Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teacher and principal salaries are now published.

(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local school administrative unit who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

(1) Each local board of education shall establish a set date on which monthly salary payments to superintendents shall be made. This set pay date may differ from the end of the calendar month of service. Superintendents shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. The daily rate of pay shall equal the number of weekdays in the pay period. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that superintendents may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any superintendent with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. Upon separation from service due to service retirement, any

annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.

(4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(c) The State Board of Education, in fixing the State standard salary schedule of superintendents as authorized by law, shall provide that superintendents who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 6, s. 1; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 946, s. 1; 1983, c. 872, s. 1; 1985, c. 757, s. 145(c); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, s. 4; 1989 (Reg. Sess., 1990), c. 1066, s. 93; 1993, c. 321, s. 73(a); 1995, c. 450, s. 17; 1997-443, s. 8.38(f); 1999-237, s. 28.26(c).)

CASE NOTES

Dual Office Holding. — The office of county superintendent of public instruction was such an office as came within the former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9), which prohibited the holding of more than one office by any person. Whitehead v. Pittman, 165 N.C. 89, 80 S.E. 976 (1914), decided under corresponding provisions of former law.

Cited in Gunter v. Anders, 114 N.C. App. 61, 441 S.E.2d 167.

OPINIONS OF ATTORNEY GENERAL

Salary and Hours of Certified Employees. — N.C. Const., Art. IX, § 5 and G.S. 115C-12(9), 115C-284(c), 115C-296, and 115C-315(d) and subsection (a) of this section give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

§ 115C-273. Salary schedule for superintendents.

Every local board of education may adopt, as to assistant or associate superintendents not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. (1955, c. 1372, art. 5, s. 32; 1965, c. 584, s. 3; 1981, c. 423, s. 1.)

Editor's Note. — Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid under Section 7.45 of this act shall not be eligible for this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that maybe carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2009-26, s. 8, provides: "Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget."

§ 115C-274. Removal.

(a) Local boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Board of Education has sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, the State Board of Education shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of that board of education to hear the evidence in the case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor: Provided, that such superintendent shall have the right to try his title to office in the courts of the State.

(b) If the superintendent shall fail in the duties enumerated in G.S. 115C-276(g), 115C-276(h), 115C-276(i), or any other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Board of Education or by his board of education for failure to perform his duties. For persistent failure to perform these duties, the State Board of Education may revoke the superintendent's certificate and the superintendent may be dismissed by his board of education.

(c) The identification by the State Board of Education of more than half the schools in a local school administrative unit as low-performing under G.S. 115C-105.37 is evidence that the superintendent is unable to fulfill the duties of the office, and the State Board may appoint an interim superintendent to carry out the duties of the superintendent under G.S. 115C-105.39, may revoke the superintendent's certificate under this section, may dismiss the superintendent under G.S. 115C-105.39, or may take any combination of these actions. (1955, c. 1372, art. 5, s. 25; art. 6, s. 4; 1981, c. 423, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 6.)

CASE NOTES

As to procedure and scope of review of termination of employment of superintendent under former Chapter 115, see James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 115C-275. Vacancies in office of superintendent.

In case of vacancy by death, resignation, or otherwise, in the office of a superintendent, such vacancy shall be filled by the local board of education in which such vacancy occurred. If the vacancy is filled on a temporary basis, subject to the same approvals and to the same educational qualifications as provided for superintendents, the individual appointed to fill the vacancy on a temporary basis shall be paid the salary provided for superintendents. During the time any superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the Superintendent of Public Instruction, any duty or duties of such superintendent which necessity requires be performed during such time. If the superintendent's duty of signing warrants and checks is assigned, the board shall give proper notice immediately to the State Controller and to the appropriate local disbursing official. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3; 1977, c. 298; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 11; 1991, c. 542, s. 1.)

§ 115C-276. Duties of superintendent.

(a) In General. — All acts of local boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board.

All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

(b) To Serve as Secretary to Board. — Superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection.

(c) To Monitor Condition of School Plants. — It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediate provisions to remedy any unsafe or unsanitary conditions existing in any school building.

(d) To Attend Professional Meetings. — It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

(e) To Report Certain Information to the Superintendent of Public Instruction. — It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

(f) To Administer Oaths When Required. — The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same.

(g) To Familiarize Himself with and to Implement State Policies and Rules. — It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

(h) To Hold Necessary Teachers' Meetings. — The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

(i) To Distribute Certain Supplies and Information. — The superintendent shall distribute to all school personnel all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

(j) To Assist the Local Board in Electing School Personnel. — It shall be the duty of the superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the administrative unit.

(k) To Submit Organization Reports and Other Information to the State Board. — Each year the superintendent of each local school administrative unit shall submit to the State Board of Education statistical reports, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require. At the end of the second month of school each year, local boards of education, through the superintendent, shall report school organization, employees' duties, class sizes, and teaching loads to the State Board of Education as provided in G.S. 115C-47(10). As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(*l*) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. — The superintendent shall maintain in his office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in G.S. 115C-325.

(m) To Furnish Boundaries of Special Taxing Districts. — It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed.

(n) To Issue Salary Vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher. The superintendent shall not approve the vouchers for the pay of principals or teachers until the monthly and annual reports required by the local board of education are made.

(o) To Participate in the School Budget and Finances. — The superintendent shall participate in the school budget and finances, as provided in Article 31 of this Chapter.

(p) To Require Teachers and Principals to Make Reports. — The superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent. Any superintendent who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(q) To Assign School Principals. — Subject to local board policy, the superintendent shall have the authority to assign principals to school buildings. When making an assignment, the superintendent shall consider (i) whether a principal has demonstrated the leadership ability to increase student achievement at a school where conditions indicated a significant risk of low student performance; and (ii) how to maintain stability at a school where, during the time the principal has been at a school, there has been significant improvement on end-of-course or end-of-grade tests and other accountability measures developed by the State Board of Education.

(r) To Maintain Student Discipline. — The superintendent shall maintain student discipline in accordance with Article 27 of this Chapter and shall keep data on each student suspended for more than 10 days or expelled. This data shall include the race, gender, and age of each student, the duration of suspension for each student, whether an alternative education was considered or provided for each student, and whether a student had multiple suspensions.

(s) To Provide for Annual Evaluations and Action Plans. — The superintendent shall provide for the annual evaluation of all certified employees assigned to low-performing schools that did not receive an assistance team. The superintendent shall determine whether all principals and assistant principals who evaluate certified employees are trained in the proper administration of the employee evaluations and the development of appropriate action plans. The superintendent also shall arrange for principals and assistant principals who evaluate certified employees to receive the appropriate training.

(t) Report on DWI Vehicle Forfeiture. — The superintendent, or the superintendent's designee, of each county school system shall report by October 1 of each year to the Department of Public Instruction the receipts received by the county school from the sale of seized vehicles and all costs to the county board of education for administering the DWI motor vehicle forfeiture law. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee annually by December 1 the results of these reports filed by the county school superintendents under this section. (1955, c. 1372, art. 5, s. 24; art. 6, ss. 3-6, 10, 15; art. 17, s. 6; art. 18, s. 7; 1959, c. 1294; 1963, c. 688, s. 3; 1965, c. 584, ss. 5, 6, 16; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, ss. 17, 18, 24; 1987 (Reg. Sess., 1988), c. 1025, s. 12; c. 1086, s. 89(c); 1993, c. 169, s. 2; c. 210, s. 4; c. 539, s. 882; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 386, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 25; 1998-5, s. 6; 1998-182, s. 38; 1998-220, s. 10.)

Cross References. — As to the superintendent's recommendations for principals and supervisors, see G.S. 115C-284. As to the allocation of teachers by the State Board of Education based on the local organization statements, see G.S. 115C-301.

CASE NOTES

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

Claims Against Superintendent Dismissed Since Superintendent Does Not Vote on Appropriations. — Trial court did not err in dismissing plaintiffs' claims against superintendent; although plaintiffs alleged superintendent's representations to both defendant boards "were grossly overstated" and "without foundation in fact," plaintiffs did not allege superintendent was in a decision-making position as to acquisition of the Square D facility. As a matter of law, a superintendent does not vote on appropriations. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

Recommending Assistant Principal. — The position of assistant principal is outside the category of teachers, and should be recommended to the county or city board of education by the superintendent of schools. See opinion of the Attorney General to Mr. William E. Terry, Superintendent, Stokes County Board of Education, 40 N.C.A.G. 250 (1969), rendered under former Chapter 115.

§ 115C-277. Office, equipment, and clerical assistance to be provided by board.

It shall be the duty of the various boards of education to provide the superintendent of schools with an appropriate office. Likewise, it shall be the duty of the various boards of education to furnish adequately the superintendent's office and provide all necessary office supplies. Authority is hereby given to boards of education to employ sufficient clerical assistants and purchase sufficient office machines and equipment to the end that the business of the superintendent of schools shall always be conducted in a prompt and efficient manner. (1955, c. 1372, art. 5, s. 23; 1981, c. 423, s. 1.)

§ 115C-278. Assistant superintendent and associate superintendent.

Local boards of education shall have authority to employ an assistant superintendent, in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent shall be assigned by the superintendent with the approval of the board of education.

Local boards of education may, upon the recommendation of the superintendent, elect assistant or associate superintendents for a term of from one to four years. The term may not, however, exceed the expiration date of the superintendent's contract, unless the remaining time of the superintendent's contract is less than one year. If there is less than one year remaining on the superintendent's contract, the assistant or associate superintendent shall be given a contract through the next school year.

The term of employment shall be stated in a written contract which shall be entered into between the board of education and the assistant or associate superintendent, a copy of which shall be filed with the Superintendent of Public Instruction as a matter of information. The assistant or associate superintendent may not be dismissed during the term to which he is elected except for misconduct of such a nature as to indicate he is unfit to continue in his position, incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties. (1955, c. 1372, art. 5, s. 27; 1971, c. 1188, s. 1; 1973, c. 733; 1981, c. 423, s. 1.)

§§ 115C-279 through 115C-283: Reserved for future codification purposes.

ARTICLE 19.

Principals and Supervisors.

§ 115C-284. Method of selection and requirements.

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(b1) To qualify for certification as a school administrator, an individual must meet all of the following requirements:

(1) Submit a complete application to the State Board.
(2) Pay the applicable fee.
(3) Have a bachelor's degree from an accredited college or accredited university.
(4) Have one of the following:
    a. A graduate degree from a public school administration program that meets the public school administration program approval standards established by the State Board of Education.
    b. A master's degree from an accredited college or accredited university and, by December 31, 1999, have completed a public school administration program that meets the public school administration program approval standards set by the State Board of Education.
    c. Education and training determined by the State Board of Education as equivalent.
(5) Pass the exam adopted by the State Board.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. The Board shall not issue provisional certificates for principals.

The Board shall issue a one-year provisional assistant principal's certificate to an employee of a local board only if: (i) the local board determines there is a shortage of persons who hold or are qualified to hold a principal's certificate and the employee enrolls in an approved program leading to a masters degree in school administration before the provisional certificate expires; or (ii) the employee is enrolled in an approved masters in school administration program and is participating in the required internship under the masters program. The Board shall extend the provisional certificate for a total of no more than two additional years while the employee is completing the program.

(c1) It is the policy of the State of North Carolina to maintain the highest quality principal and assistant principal education programs in order to enhance the competence of professional personnel certified in North Carolina. To ensure that principal and assistant principal preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than March 1, 1992, a plan to promote this policy. In developing this plan, the State Board shall consider (i) requiring these programs to include additional preparation for site-based decision making and for the additional autonomy being granted to local school units, (ii) enhancing program entrance requirements to include assessment of an applicant's ability to complete the program and to perform as a principal, and (iii) enhancing the overall content of the programs.

The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors and such other public and private agencies as are necessary, shall refine the several certification requirements, standards for approval of institutions of principal and assistant principal education, standards for institution-based innovative and experimental programs, and standards for improved efficiencies in the administration of the approved programs.

(c2) The State Board of Education shall adopt new standards by July 1, 2008, for school administrator preparation programs. The new standards shall:

(1) Be aligned with the revised standards for the evaluation of school executives and specifically address the use of the results of the Teacher Working Conditions Survey;

(2) Require evidence of a high level of institutional commitment, including dedicated resources, for administrator preparation program improvements and redesign;

(3) Require the use of cross-functional work teams to determine a common curriculum framework that (i) is designed to align with defined standards, (ii) includes rigorous core courses, and (iii) will produce administrators who meet the defined standards. The cross-functional work teams shall include school-based personnel, faculty from schools

of education and other disciplines from institutions of higher education, and representatives of State agencies;

(4) Require the use of cross-functional work teams to design and periodically update specific standards regarding placement, required activities, and evaluations of clinical experiences. These standards shall include appropriate training for the school leaders who agree to accept and supervise interns;

(5) Require written agreements between the institution of higher education and a local school administrative unit to govern their shared responsibility for (i) recruitment and preparation of school administrators, especially with regard to clinical experiences including the internship, and (ii) a new administrator's success once employed;

(6) Require authentic partnerships between adjunct faculty and full-time faculty to fully address the need for both practical, field-based experience and academic, theory-based experience. These partnerships may require a change in the institution of higher education's definition of scholarly activity and its reward system;

(7) Require all candidates to complete a year-long internship; and

(8) Require the development of portfolios for emerging leaders that provide evidence they are applying their training to actual school needs and challenges.

Institutions of higher education shall redesign their school administrator preparation programs to meet the new standards and report to the State Board of Education on the redesign by July 1, 2009.

(d) Repealed by Session Laws 1989, c. 385, s. 1.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(e) It shall be unlawful for any board of education to employ or keep in service any principal or supervisor who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers.

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372 art. 5, ss. 4, 27; art. 6, s. 6; art. 18, ss. 1-4; 1963, c. 688, s. 3; 1965, c. 584, ss. 6, 20.1; 1969, c. 539; 1971, c. 1188, s. 1; 1973, cc. 236, 733; c. 770, ss. 1, 2; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 4; 1985 (Reg. Sess., 1986), c. 975, s. 16; 1989, c. 385, s. 1; 1991, c. 689, s. 200(a); 1991 (Reg. Sess., 1992), c. 1030, s. 28; 1993, c. 392, s. 2; 1999-30, s. 1; 1999-394, s. 1; 2006-264, s. 56(b); 2007-517, s. 1; 2008-187, s. 43.)

Effect of Amendments. — Session Laws 2008-187, s. 43, effective August 7, 2008, added subsection (b1).

CASE NOTES

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

Cause of Action Against Board of Education for Negligent Employment and Retention of Principal. — For a case involving cause of action under common law against county board of education for negligent employment and retention of principal who sexually assaulted a student, see Medlin v. Bass, 327 N.C. 587, 398 S.E.2d 460 (1990).

OPINIONS OF ATTORNEY GENERAL

Salary and Hours of Certified Employees. — N.C. Const., Art. IX, § 5 and G.S. 115C-12(9), 115C-272(a), 115C-296, and 115C-315(d) and subsection (c) of this section give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

§ 115C-285. Salary.

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

(1) Classified principals and State-allotted supervisors shall be employed for a term of 12 calendar months. Each local board of education shall establish a set date on which monthly salary payments to classified principals and State-allotted supervisors shall be made. This set pay date may differ from the end of the calendar month of service. Classified principals and State-allotted supervisors shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. They shall earn annual vacation leave at the same rate provided for State employees. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at the time agreed upon by the employee and his immediate supervisor. They shall be provided by the board the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) Supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any supervisor or principals with more than 30 days of accumulated leave shall have the excess accumulation converted to

sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year, except as provided in subdivision (5) of this section.

(4) Each local board of education shall sustain any loss by reason of an overpayment to any principal or supervisor paid from State funds.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) The State Board of Education, in fixing the State standard salary schedule of principals as authorized by law, shall provide that principals who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(7) All persons employed as principals in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education.

(8) A teacher who becomes an assistant principal without a break in service shall be paid, on a monthly basis, at least as much as he or she would earn as a teacher employed by that local school administrative unit.

(b) Every local board of education may adopt, as to principals and supervisors not paid out of State funds, a salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) The board of education may withhold the salary of any supervisor or principal who delays or refuses to render such reports as are required by law, but when the reports are delivered in accordance with law, the salary shall be paid forthwith. (1955, c. 1372, art. 5, s. 32; art. 6, s. 13; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, c. 383; c. 437, s. 9; c. 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 4; c. 946, s. 2; 1983, c. 872, s. 2; 1985, c. 757, s. 145(d); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, s. 5; 1989, c. 386, s. 1; 1993, c. 321, s. 73(b); 1995, c. 450, s. 18; 1997-443, s. 8.38(g); 1999-237, s. 28.26(d); 2009-451, s. 7.22(a).)

Editor's Note. — The version of subsection (p) of G.S. 115C-325 referred to in subdivision (a)(7) was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 34.

Session Laws 2009-26, s. 8, provides: "Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.22(a), effective July 1, 2009, and applicable to all persons initially employed as assistant principals on or after that date, added subdivision (a)(8).

CASE NOTES

Cited in McFadyen v. Freeman, 127 N.C. App. 202, 487 S.E.2d 782 (1997).

§ 115C-286. Rules for conduct of principals and supervisors.

The conduct of principals and supervisors, the kind of reports they shall make, and their duties in the care of school property are subject to the rules of the local board, as provided in G.S. 115C-47(18). (1981, c. 423, s. 1.)

CASE NOTES

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

Derivative Liability of Board of Education Under Doctrine of Respondeat Superior for Principal's Act. — For a case holding that principal's act in sexually assaulting a student was, as a matter of law, beyond the scope and course of employment and that local board of education could have no derivative liability under common law doctrine of respondeat superior, see Medlin v. Bass, 327 N.C. 587, 398 S.E.2d 460 (1990).

§ 115C-286.1. Evaluations of principals.

Local school administrative units shall evaluate all principals and assistant principals at least once each year. Either the superintendent or the superintendent's designee shall conduct the evaluations.

The State Board of Education shall ensure that the standards and criteria for the evaluations include the accountability measures of teacher retention, teacher support, and school climate. The State Board shall revise its evaluation instruments to include these measures. A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. (2005-276, s. 7.29.)

§ 115C-287: Repealed by Session Laws 1993, c. 210, s. 5.

§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.

(a)(1) Beginning July 1, 1995, all persons employed as school administrators shall be employed pursuant to this section.

(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:

a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and

b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.

A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.

(3) For purposes of this section, school administrator means a:

a. Principal;
b. Assistant principal;
c. Supervisor; or
d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.

(b) Local boards of education shall employ school administrators who are ineligible for career status as provided in G.S. 115C-325(c)(3), upon the recommendation of the superintendent. The initial contract between a school administrator and a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of a subsequent contract between a principal or assistant principal and a local board of education, the contract shall be for a term of four years. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a career teacher may be dismissed or demoted as set forth in G.S. 115C-325.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision and the reasons for his or her decision no later than May 1 of the final year of the contract. The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political. No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. Failure to file a timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision. If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may be for any cause that is not arbitrary, capricious, discriminatory, personal, or political. The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.

(h) An individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325. Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate. (1993, c. 210, s. 6; 1993 (Reg. Sess., 1994), c. 677, s. 16(a); 1995, c. 369, s. 1; 1998-220, s. 16; 1999-30, s. 3; 2003-291, s. 1.)

CASE NOTES

Assistant Principal Precluded From Bringing State Constitutional Claim. — District court's grant of summary judgment to defendants on state constitutional claims was affirmed where the plaintiff, an assistant principal, could have sought review of defendants' decision to demote her under G.S. 115C-287.1(d) instead of directly under N.C. Const. art. I, §§ 14 and 19. Love-Lane v. Martin, 355 F.3d 766, 2004 U.S. App. LEXIS 937 (4th Cir. 2004), cert. denied, — U.S. —, 125 S. Ct. 49, 160 L. Ed. 2d 18 (2004), cert. denied, — U.S. —, 125 S. Ct. 68, 160 L. Ed. 2d 18 (2004).

Right to Hearing. — When a school superintendent recommended to a school board that a probationary teacher's contract, which had expired, not be renewed, G.S. 115C-325(o) did not give the teacher a right to an evidentiary hearing before the board because a reasonable construction of that statute was that the board only had to notify a probationary decision of the board's decision not to renew the teacher's contract once that decision was made, rather than the prior notice required, under G.S. 115C-287.1(d), in the cases of school administrators and career teachers. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Cited in Love-Lane v. Martin, 201 F. Supp. 2d 566, 2002 U.S. Dist. LEXIS 17219 (M.D.N.C. 2002).

§ 115C-288. Powers and duties of principal.

(a) To Grade and Classify Pupils. — The principal shall have authority to grade and classify pupils. In determining the appropriate grade for a pupil who is already attending a public school, the principal shall consider the pupil's classroom work and grades, the pupil's scores on standardized tests, and the best educational interests of the pupil. The principal shall not make the decision solely on the basis of standardized test scores. If a principal's decision to retain a child in the same grade is partially based on the pupil's scores on standardized tests, those test scores shall be verified as accurate.

A principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available.

(b) To Make Accurate Reports to the Superintendent and to the Local Board. — The principal shall make all reports to the superintendent. Every principal of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any principal or supervisor who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(c) To Improve Instruction and Community Spirit. — The principal shall give suggestions to teachers for the improvement of instruction.

(d) To Conduct Fire Drills and Inspect for Fire Hazards. — It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file two copies of a written report once each month during the regular school session with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(e) To Discipline Students and to Assign Duties to Teachers with Regard to the Discipline, General Well-being, and Medical Care of Students. — The principal shall have authority to exercise discipline over the pupils of the school under policies adopted by the local board of education as prescribed by G.S. 115C-391(a). The principal shall use reasonable force to discipline students under G.S. 115C-390 and may suspend or dismiss pupils under G.S. 115C-391. The principal shall assign duties to teachers with regard to the general well-being and the medical care of students under G.S. 115C-307 and Article 26A of this Chapter.

(f) To Protect School Property. — The principal shall protect school property as provided in G.S. 115C-523.

(g) To Report Certain Acts to Law Enforcement and the Superintendent. — When the principal has personal knowledge or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report to law enforcement under this subsection is a Class 3 misdemeanor. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

(h) To Make Available School Budgets and School Improvement Plans. — The principal shall maintain a copy of the school's current budget and school improvement plan, including any amendments to the plan, and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes.

(i) To Evaluate Certified Employees and Develop Action Plans. — Each school year, the principal assigned to a low-performing school that has not received an assistance team shall provide for the evaluation of all certified employees assigned to the school. The principal also shall develop action plans as provided under G.S. 115C-333(b) and shall monitor an employee's progress under an action plan.

(j) To Transfer Student Records. — The principal shall not withhold the transfer of student records, except as is provided in G.S. 115C-403(b).

(k) To Sign Driving Eligibility Certificates and to Notify the Division of Motor Vehicles. — In accordance with rules adopted by the State Board of Education, the principal or the principal's designee shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions.

(*l*) To Establish School Improvement Teams. — Each school year, the principal shall ensure that a school improvement team is established under G.S. 115C-105.27 for the purpose of developing, reviewing, and revising a school improvement plan. (1955, c. 1372, art. 17, ss. 6, 8; 1957, c. 843; 1959, c. 573, s. 13; c. 1294; 1965, c. 584, s. 15; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 4; 1987, c. 572, s. 3; 1993, c. 327, s. 1; c. 539, s. 883; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 716, s. 7.1; 1996, 2nd Ex. Sess., c. 18, s. 18.27; 1997-443, s. 8.29(t); 1998-5, s. 7; 1998-220, s. 13; 1999-243, s. 7; 1999-373, s. 2; 2001-424, s. 28.17(b); 2005-22, s. 5; 2009-410, s. 1.)

Cross References. — As to dissemination of criminal intelligence information, see G.S. 14-50.27A.

Fairness in Testing Program. — Session Laws 2001-424, s. 28.17(a), provides: "The State Board of Education shall provide the Joint Legislative Education Oversight Committee with a detailed analysis of the current resources allocated to meet the needs of all students subject to the Statewide Student Accountability Standards, and in addition, shall submit recommendations regarding other resources that would best assist students in meeting these new standards."

Session Laws 2001-424, s. 28.17(g), provides: "Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning."

Session Laws 2001-424, s. 28.17(h), as amended by Session Laws 2001-487, s. 116, provides: "Students in a local school shall not be subject to field tests or national tests during the two-week period preceding the administration of the end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams. No school shall participate in more than two field tests at any one grade level during a school year unless:

"(1) That school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests; or

"(2) The State Board of Education makes written findings, based on information provided by the Department of Public Instruction, that an additional field test must be administered at that school to ensure the reliability and validity of a specific test."

Session Laws 2001-424, s. 28.17(j), provides: "The State Board of Education shall develop and report to the Joint Legislative Education Oversight Committee on its objectives for the

Statewide Testing Program and on the implementation of that Program. The report shall include:

"(1) A statement of the relationship between these objectives and the tests currently administered under the Program;

"(2) An analysis of whether the current tests appropriately achieve these objectives;

"(3) A statement of any actions that may be needed to coordinate the objectives and the tests more effectively; and

"(4) Strategies for communicating the objectives of the Program, the tests administered under the Program, and the relationship between these objectives and tests to principals, teachers, parents, and students throughout the State."

Editor's Note. — Session Laws 1999-243, s. 10, provides: "The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act."

Session Laws 1999-243, s. 11, provides: "Sections 5, 6, 9, and 10 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. This act shall apply only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Effect of Amendments. — Session Laws 2009-410, s. 1, effective August 5, 2009, in subsection (g), substituted "Enforcement and the Superintendent" for "Enforcement" in the subsection heading, inserted "to law enforcement" in the second sentence, and deleted the former last sentence, which read: "It is the intent of the General Assembly that the principal notify the superintendent and the superintendent notify the local board of any report made to law enforcement under this subsection"; and added the second paragraph.

Legal Periodicals. — For note on constitutional restrictions on the infliction of corporal punishment, see 50 N.C.L. Rev. 911 (1972).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Superintendent and Principal as Agents of Board. — By statute and under traditional common-law principles, the superintendent and principal are agents of the board. The board cannot escape responsibility for its actions, based on the recommendations of its agents, by simply refusing to inquire into its agents' reasons. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984), cert. denied, 313 N.C. 506, 329 S.E.2d 389 (1985).

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

But Boards and Officials May Adopt Reasonable Regulations. — Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

School Dress Code. — A school may adopt a dress code and may exclude a student from participating in certain school programs, including graduation ceremonies, if the student does not comply with the dress code. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Violation of Dress Code. — Where the principal of a high school established a lawful and valid dress code for eligible graduates participating in the graduation ceremony, and the plaintiffs' son appeared for the graduation ceremony attired in violation of the code, in that he did not wear dress pants as required, but instead wore denim jeans, the defendant principal had the legal right to exclude plaintiffs' son from the graduation ceremony for violation of the dress code. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Principal Was Justified in Using Reason-

able Force to Prevent Student from Leaving School Premises. — A student, in failing to heed the principal's warnings not to exit the building, engaged in and continued a difficulty with the principal that required the principal, under G.S. 115C-288(e), to undertake some reasonable force to protect defendant's safety and to prevent defendant from leaving the school premises. In re Pope, 151 N.C. App. 117, 564 S.E.2d 610, 2002 N.C. App. LEXIS 682 (2002).

Principal's Duty to Keep Superintendent and Board Informed. — It is the duty of the principal to keep the superintendent and, through the superintendent, the board of education, informed about all phases of school operations. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Reports Qualifiedly Privileged. — The reports a principal makes in the performance of his duties are qualifiedly privileged. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

OPINIONS OF ATTORNEY GENERAL

Age Requirements For Entry Into Public School. — Unless a child qualifies for one of the two exceptions set out in .G.S. 115C-364, a principal has no discretion with regard to the age at which a child may initially enroll in public school — by statute a child must have reached age 5 on or before October 16 of the kindergarten year; however, once a child is old enough to enroll in public school, his or her grade placement in the initial year or any subsequent years is governed by by subsection (a) of this section. See opinion of Attorney General to Mr. T. Brooks Skinner, Jr., General Counsel, North Carolina Department of Administration, 2003 N.C.A.G. 12 (9/16/03).

§ 115C-289. Assignment of principal's duties to assistant or acting principal; duties of State-funded assistant principals.

(a) Any duty or responsibility assigned to a principal by statute, State Board of Education regulation, or by the superintendent may, with the approval of the local board of education, be assigned by the principal to an assistant principal designated by the local board of education or to an acting principal designated by a principal.

(b) All persons employed as assistant principals in State-allotted positions, or as assistant principals in full-time positions regardless of funding source, in the public schools of the State or in schools receiving public funds, shall, in addition to other applicable requirements, be required either to hold or be qualified to hold a principal's certificate or a provisional assistant principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. It shall be unlawful for any board of education to employ or keep in service any assistant principal who neither holds nor is qualified to hold a principal's certificate or a provisional assistant principal's certificate in compliance with applicable law and in accordance with the regulations of the State Board of Education. Persons who hold a provisional assistant principal's certificate and who are employed as assistant principals shall be employed under G.S. 115C-287.1(h).

(c) Repealed by Session Laws 1991, c. 689, s. 200(b).

(d) Assistant principals paid from State funds shall not have regularly assigned teaching duties. (1977, c. 539; 1981, c. 423, s. 1; 1987, c. 328; c. 830, s. 89(c); 1991, c. 689, s. 200(b); 1999-30, s. 2.)

§ 115C-290: Reserved for future codification purposes.

ARTICLE 19A.

Standards Board for Public School Administration.

§§ 115C-290.1 through 115C-290.9: Repealed by Session Laws 2006-264, s. 56, effective August 27, 2006.

Editor's Note. — Former G.S. 115C-290.3 and 115C-290.4 were repealed by Session Laws 2001-424, s. 28.25(b) and (c), effective July 1, 2001.

"G.S. 115C-290.5 was also amended by Session Laws 2006-203, s. 33, effective July 1, 2007 and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, which rewrote subdivision (a)(5). The section is set out above as repealed."

§§ 115C-291 through 115C-294: Reserved for future codification purposes.

ARTICLE 20.

Teachers.

§ 115C-295. Minimum age and certificate prerequisites.

(a) All teachers employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided further, that no person shall be employed to teach who is under 18 years of age.

(b) It shall be unlawful for any board of education to employ or keep in service any teacher who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372, art. 18, ss. 1, 4; 1975, c. 437, s. 7; c. 731, ss. 1, 2; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 16.)

Cross References. — As to a career development pilot program, see G.S. 115C-363 et seq. As to the North Carolina Teacher Academy Board of Trustees, see G.S. 116-30.01.

Opportunities for Military Personnel. — Session Laws 2001-146, s. 1, provides: "The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Department of Public Instruction shall work cooperatively to expand the opportunities for military personnel to enroll in and complete teacher education programs prior to discharge from the military. The cooperative effort shall include the expansion, as feasible, of teacher education classes and programs on military bases and at alternate nearby sites, through Internet-based course offerings, and through cooperative education programs. The cooperative effort shall also focus on the educational needs unique to active military personnel who are potential teachers or teacher assistants and ways to make the necessary classes and programs more accessible to them. A special effort shall also be made to communicate with and inform military personnel of the educational opportunities available on military bases, at alternate sites near military bases, through long-distance education, and through cooperative education."

Teacher Education Programs through Distance Education. — Session Laws 2001-424, s. 31.7, provides: "(a) It is the intent of the General Assembly to make teacher education programs easily accessible statewide through distance education. The General Assembly finds that the "2 + 2" program is an excellent model for teacher credential programs and encourages its use as a model.

"(b) To achieve the goal of encouraging the "2 + 2" program as a model for teacher education programs and to make those model teacher education programs available and easily accessible statewide, any teacher education program that is offered by a constituent institution through distance education that does not require campus residency is eligible for funds appropriated by this act [Session Laws 2001-424] for that purpose. The Board of Governors shall determine the eligibility of a constituent institution pursuant to this section [s. 31.7 of Session Laws 2001-424]. The Board of Governors shall also determine the amount of funds to be allocated to each eligible constituent institution based on the number of student credit hours taught in teacher preparation courses through distance education at that institution and shall distribute those funds to the institution. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee annually regarding the implementation of this section [s. 31.7 of Session Laws 2001-424] and the amount and use of the funds allocated pursuant to this section [s. 31.7 of Session Laws 2001-424].”

State Board Teacher Retention Task Force. — Session Laws 2004-161, ss. 28.1 through 28.4, provide: “The State Board of Education shall form a Task Force cochaired by the State Board of Education Chairman or designee and the Lt. Governor or designee to study issues related to effective recruitment and retention of teachers for the North Carolina public schools. The Task Force shall include practicing public school teachers, principals, superintendents, local boards of education, and representatives from the University System, the Community College System, and others as deemed appropriate by the cochairs. In the course of this study, the State Board of Education shall consider:

“(1) Impediments to effective teacher recruitment and retention;

“(2) Strategies for increasing the effectiveness or recruitment and retention efforts;

“a. Modifications to teacher salaries and benefits that will ensure that teacher compensation in North Carolina remains at or above the national average, thereby better enabling the public schools to recruit and retain highly qualified teachers. The State Board may consider:

“1. Increased salaries for beginning teachers to make the profession more attractive at the entry level;

“2. Increased salaries for teachers at those points at which higher numbers of teachers leave the teaching profession;

“3. Retirement options for teachers with 30 years of experience that will provide opportunities for those highly skilled and experienced teachers to continue in service;

“4. Differentiated salary opportunities for teachers who demonstrate exemplary teaching skills, work in certain areas of certification, work in hard-to-staff schools, or serve as mentors, school improvement team leaders, or serve as leaders in a Quality Teacher as Leader Program;

“5. Other modifications to teacher salaries and benefits necessary to recruit and retain highly qualified teachers in the public schools.

“b. Tax incentives to encourage experienced teachers to remain in the teaching profession;

“c. Locally designed initiatives to facilitate teacher recruitment and retention;

“d. Strategies for increasing the number of highly qualified beginning teachers such as:

“1. Expanding teacher preparation programs;

“2. Expanding scholarship loan programs for prospective teachers to recruit the most qualified high school students to the teaching profession; and

“3. Ensuring that graduates of teacher preparation programs are well prepared to meet teacher-certification requirements.

“e. Strategies for giving beginning teachers the opportunity to develop into skilled professionals such as assigning them to teach only in their area of certification and minimizing their noninstructional duties;

“f. Strategies for ensuring that school-based administrators are adequately trained to provide support for both experienced and inexperienced teachers and that they provide that support;

“g. Strategies for ensuring that teachers are treated respectfully by students, such as a Teachers’ Bill of Rights;

“h. Increased expectations regarding parental involvement in and support of their children’s education;

“i. The availability of communications devices in the classroom;

“j. Strategies for a Quality Teacher as Leader Program as a career option that compensates teachers for accomplished teaching and values teachers as leaders; and

“k. Strategies for ensuring that schools are staffed appropriately and teachers have the time necessary to meet the State, federal and local demands for quality teaching and learning environments.

“The State Board of Education shall report its findings and recommendations to the Joint Legislative Education Oversight Committee prior to February 15, 2005. These recommendations may include changes to laws and policies.

“The Department of Public Instruction shall provide staff to support the work of the Task Force upon the request of the cochairs or staff and consultants may be hired from funds designated to support the work of the Task Force.

“The State Board of Education shall use federal funds to support the work of the Task Force.”

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, ss. 9.3(a)-(c), provide: “(a) Funds appropriated in this act to The University of North Carolina for the UNC-NCCCS Joint Initiative for Teacher Education and Recruitment shall be used to establish eight positions. These individuals shall have an office in and work with staff in the Regional Alternative Licensure Centers of the Department of Public Instruction. Their responsibilities are to assist in increasing the number of certified teachers in the public schools of North Carolina. To accomplish this, their specific tasks are as follows:

“(1) Resolve curriculum issues between The University of North Carolina campuses and the community colleges within each region to ensure seamless articulation;

“(2) Serve as licensure advisors to prospective teachers and assist with individual reviews for lateral entry candidates;

"(3) Offer admissions advice to community college students seeking to transfer to a four-year institution; and

"(4) Recruit prospective teachers on community college campuses.

"Funds have been included in the appropriation to ensure these staff members can travel routinely among all the University System campuses and community college sites within a region.

"(b) The results of this initiative shall be reported annually, and shall include at a minimum, the following performance outcomes by region in which the advisors are working:

"(1) Number of community college students articulated and working toward teacher licensure, their 'base' community college, and The University of North Carolina institution to which they have moved;

"(2) Number of lateral entry teachers worked with by these advisors who are actively pursuing certification, and the number licensed;

"(3) Head count of the number of students in the process of receiving courses towards certification, their home county, where/at what institution(s) they are taking the course(s), and whether they are taking the course by regular attendance or via distance education (or the respective percentages if both methods are being employed);

"(4) Total full-time equivalencies (FTE's) and student credit hours that the head count in subdivision (3) of this subsection represents;

"(5) Articulation issues and curriculum changes effectively made as a result of these advisors; and

"(6) Articulation issues that are under discussion but have not been satisfactorily resolved.

"(c) These results shall be reported by September 1, 2006, and annually thereafter to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Commission, and the Office of State Budget and Management."

Session Laws 2005-276, s. 9.35, provides: "The Joint Legislative Education Oversight Committee shall study the current law regarding the in-State tuition rate available to certain teachers for courses relevant to teacher certification or professional development as a teacher. In its study, the Committee shall consider the difficulty some teachers have in establishing North Carolina as their domicile, the fact that school systems on the borders of the State often recruit nonresidents who commute from their homes to teach in the North Carolina public school system and so are unable to establish this State as their domicile and any other relevant issues. The Committee shall make an interim report regarding its findings and recommendations to the 2005 General Assembly by May 30, 2007, and shall make a final report of its findings and recommendations to the 2007 General Assembly."

Editor's Note. — Session Laws 2001-424, s. 1.2, provides "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

"Temporary Personnel" Not Included in Definition of "Probationary Teacher". — The General Assembly did not intend that the "temporary personnel" authorized by this section be included within the definition of "probationary teacher" contained in G.S. 115C-325 (a)(5). Campbell v. Board of Educ., 76 N.C. App. 495, 333 S.E.2d 507 (1985), cert. denied, 315 N.C. 390, 338 S.E.2d 878 (1986).

Teacher on a probation emergency B certificate was required to take the National Teacher Examination and attain a satisfactory score in order to have a standard certificate, which was required for the school in which he taught, both to remain accredited by the State of North Carolina, and to remain in the employ of the school board. James v. Beaufort County Bd. of Educ., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972), decided under former Chapter 115.

§ 115C-295.1. North Carolina Professional Teaching Standards Commission.

(a) There is created the North Carolina Professional Teaching Standards Commission (the "Commission"). The Commission shall be located administratively under the State Board of Education but shall exercise its powers and duties independently of the State Board of Education.

(b) The purpose of the Commission is to establish high standards for North Carolina teachers and the teaching profession.

(c) The Commission shall consist of the following 16 members:

(1) The Governor shall appoint four teachers from a list of names, including the State Teacher of the Year, submitted by the State Board of Education; one principal; one superintendent; and two representatives of schools of education, one of which is in a constituent institution of The University of North Carolina and one of which is in a private college or university.

(2) The President Pro Tempore of the Senate shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.

(3) The Speaker of the House of Representatives shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.

In making appointments, the appointing authorities are encouraged to select qualified citizens who are committed to improving the teaching profession and student achievement and who represent the racial, geographic, and gender diversity of the State. Before their appointment to this Commission, with the exception of the at-large members, the members must have been actively engaged in the profession of teaching, in the education of students in teacher education programs, or in the practice of public school administration for at least three years, at least two of which occurred in this State. The members shall serve for four-year staggered terms. Terms shall begin on September 1. Vacancies in the membership shall be filled by the original appointing authority using the same criteria as provided in this subsection.

(d) The Commission shall elect a chair, a vice-chair, and a secretary-treasurer from among its membership. In the absence of the chair, the vice-chair shall preside over the Commission's meetings. All members are voting members, and a majority of the Commission constitutes a quorum. The Commission shall adopt rules to govern its proceedings.

(e) Meetings of the Commission shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(f) Members of the Commission shall receive compensation for their services and reimbursement for expenses incurred in the performance of their duties required by this Article, at the rate prescribed in G.S. 93B-5.

(g) The Commission may employ, subject to Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix compensation within the limits of funds available to the Commission. (1993 (Reg. Sess., 1994), c. 740, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 18.12(a); 2007-174, s. 1; 2007-484, s. 14.)

Editor's Note. — Session Laws 2007-174, s. 2, provides: "In order to provide for four-year staggered terms for members of the North Carolina Professional Teaching Standards Commission, the Governor shall designate two of his appointees whose terms shall expire August 31, 2008, two whose terms shall expire August 31, 2009, two whose terms shall expire August 31, 2010, and two whose terms shall expire August 31, 2011; the President Pro Tempore of the Senate shall designate one of his appointees whose term shall expire August 31, 2008, one whose term shall expire August 31, 2009, one whose term shall expire August 31, 2010, one whose term shall expire August 31, 2011; and the Speaker of the House of Representatives shall designate one of his appointees whose term shall expire August 31, 2008, one whose term shall expire August 31, 2009, one whose term shall expire August 31, 2010, and one whose term shall expire August 31, 2011."

§ 115C-295.2. Powers and duties of the Commission.

(a) The North Carolina Teaching Standards Commission shall:

(1) Develop and recommend to the State Board of Education professional standards or revisions to professional standards for North Carolina teachers.

(2) Review the areas of teacher certification and recommend to the State Board of Education those areas that should be consolidated, redesigned, eliminated, or enhanced.

(3) Consider current methods to assess teachers and teaching candidates, including the National Teacher Exam, the assessments of the National Board for Professional Teaching Standards, and alternative methods of assessment and recommend to the State Board of Education the implementation of rigorous and appropriate assessments for initial and continuing certification that are valid and reliable measures of professional practice.

(4) Evaluate, develop, and recommend to the State Board a procedure for the assessment and recommendation of candidates for initial and continuing teacher certification.

For purposes of this subsection, the areas of teacher certification include initial certification, continuing certification, and certification renewal, and do not include teacher education programs.

(b) The Commission shall submit its recommendations under subsection (a) of this section to the State Board. The State Board shall adopt or reject the recommendations. The State Board shall not make any substantive changes to any recommendation that it adopts. If the State Board rejects the recommendation, it shall state with specificity its reasons for rejection; the Commission then may amend that recommendation and resubmit it to the State Board. The Board shall adopt or reject the amended recommendation. If the State Board fails to adopt the Commission's original and amended recommendation concerning the implementation of assessments for certification and the procedure for the assessment and recommendation of candidates for teacher certification, the State Board may develop and adopt its own plan.

(c) The Commission shall submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee and the State Board of Education of its activities during the preceding year, together with any recommendations and findings regarding improvement of the teaching profession. The State Board shall submit a report by April 15, 1998, to the Joint Legislative Education Oversight Committee on the current status of assessments for certification and any changes to the procedures for assessment and recommendation of candidates for teacher certification. (1996, 2nd Ex. Sess., c. 18, s. 18.12(b).)

§ 115C-295.3: Repealed by Session Laws 1999-96, s. 6, effective May 27, 1999.

§ 115C-296. Board sets certification requirements; reports; lateral entry and mentor programs.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

(a1) The State Board shall adopt policies that establish the minimum scores for any required standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection (a) of this section. For purposes of this subsection, the State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30 days prior to changing any policy adopted under this subsection, the State Board shall provide written notice to all North Carolina schools of education and to all local boards of education. The written notice shall include the proposed revised policy.

(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.
(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.
(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.
(4) Initial application for New, In-State Approved Program Graduate, $55.00.
(5) Initial application for Out-of-State certificate, $85.00.
(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted.

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement. The certification program shall also provide for lifetime certification after 50 years of teaching.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

(b1) The State Board of Education shall develop a plan to provide a focused review of teacher education programs and the current process of accrediting these programs in order to ensure that the programs produce graduates that are well prepared to teach. The plan shall include the development and implementation of a school of education performance report for each teacher education program in North Carolina. The performance report shall include at least the following elements: (i) quality of students entering the schools of education, including the average grade point average and average score on preprofessional skills tests that assess reading, writing, math and other competencies; (ii) graduation rates; (iii) time-to-graduation rates; (iv) average scores of graduates on professional and content area examination for the purpose of certification; (v) percentage of graduates receiving initial certification; (vi) percentage of graduates hired as teachers; (vii) percentage of graduates remaining in teaching for four years; (viii) graduate satisfaction based on a common survey; and (ix) employer satisfaction based on a common survey. The performance reports shall follow a common format. The performance reports shall be submitted annually. The State Board of Education shall develop a plan to be implemented beginning in the 1998-99 school year to reward and sanction approved teacher education programs and masters of education programs and to revoke approval of those programs based on the performance reports and other criteria established by the State Board of Education.

The State Board also shall develop and implement a plan for annual performance reports for all masters degree programs in education and school administration in North Carolina. To the extent it is appropriated, the performance report shall include similar indicators to those developed for the performance report for teacher education programs. The performance reports shall follow a common format.

Both plans for performance reports also shall include a method to provide the annual performance reports to the Board of Governors of The University of North Carolina, the State Board of Education, and the boards of trustees of the independent colleges. The State Board of Education shall review the schools of education performance reports and the performance reports for masters degree programs in education and school administration each year the performance reports are submitted. The State Board shall submit the performance report for the 1999-2000 school year to the Joint Legislative Education Oversight Committee by December 15, 2000. Subsequent performance reports shall be submitted to the Joint Legislative Education Oversight Committee on an annual basis by October 1.

(b2) An undergraduate student seeking a degree in teacher education must attain passing scores on a preprofessional skills test prior to admission to an approved teacher education program in a North Carolina college or university. The State Board of Education shall permit students to fulfill this requirement by achieving the prescribed minimum scores set by the State Board of Education for the Praxis I tests or by achieving the appropriate required score, as determined by the State Board of Education, on the verbal and mathematics portions of the SAT. The minimum combined verbal and mathematics score set by the State Board of Education shall be between 900 and 1,200.

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall include preservice training in (i) the identification and education of children with disabilities and (ii) positive management of student behavior, effective communication for defusing and deescalating disruptive or dangerous behavior, and safe and appropriate use of seclusion and restraint. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than three years and shall be required to obtain certification before contracting for a fourth year of service with any local administrative unit in this State.

(c1) The State Board of Community Colleges may provide a program of study for lateral entry teachers to complete the coursework necessary to earn a teaching certificate. To this end, the State Board of Education, in consultation with the State Board of Community Colleges, shall establish a competency-based program of study for lateral entry teachers to be implemented within the Community College System no later than May 1, 2006. This program must meet standards set by the State Board of Education.

The State Board of Community Colleges and the State Board of Education shall jointly identify the community college courses and the teacher education program courses that are necessary and appropriate for inclusion in the community college program of study for lateral entry teachers. To the extent possible, any courses that must be completed through an approved teacher education program shall be taught on a community college campus or shall be available through distance learning.

In order to participate in the community college program of study for lateral entry teachers, an individual must hold at least a bachelors degree from a regionally accredited institution of higher education.

An individual who successfully completes this program of study and meets all other requirements of certification set by the State Board of Education shall be recommended for a North Carolina teaching certificate.

(c2) It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

(2) The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

(3) In addition, the State Board may revoke or refuse to renew a teacher's certificate when:
  a. The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and
  b. The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates. In addition, the Board shall have the authority to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by certificated persons.

(e) The State Board of Education shall develop a mentor program to provide ongoing support for teachers entering the profession. In developing the mentor program, the State Board shall conduct a comprehensive study of the needs of new teachers and how those needs can be met through an orientation and mentor support program. For the purpose of helping local boards to support new teachers, the State Board shall develop and distribute guidelines which address optimum teaching load, extracurricular duties, student assignment, and other working condition considerations. These guidelines shall provide that initially certified teachers not be assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties of these teachers be minimized. The State Board shall develop and coordinate a mentor teacher training program. The State Board shall develop criteria for selecting excellent, experienced, and qualified teachers to be participants in the mentor teacher training program.

(e1) The State Board of Education shall allot funds for mentoring services to local school adminstrative units based on the highest number of employees in the preceding three school years who (i) are paid with State, federal, or local funds and (ii) are either teachers paid on the first or second steps of the teacher salary schedule or instructional support personnel paid on the first step of the instructional support personnel salary schedule.

Local school administrative units shall use these funds to provide mentoring support to eligible employees in accordance with a plan approved by the State Board of Education. The plan shall include information on how all mentors in the local school administrative unit will be adequately trained to provide mentoring support. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to January 15 of each year on the use of funds for mentoring services. The report shall include, at a minimum, the impact of each unit's mentoring program on teacher retention and how all mentors in the unit are trained.

(f) The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, shall develop a new category of teacher certificate known as the "Masters/Advanced Competencies" certificate. To receive this certificate, an applicant shall successfully complete a masters degree program that includes rigorous academic preparation in the subject area which the applicant will teach and in the skills and knowledge expected of a master teacher or the applicant shall demonstrate to the satisfaction of the State Board that the candidate has acquired the skills and knowledge expected of a master teacher.

Persons who qualify for a "G" certificate prior to September 1, 2000, shall be awarded a "Masters/Advanced Competencies" certificate without meeting additional requirements. On and after September 1, 2000, no additional "G" certificates shall be awarded. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1;

1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6; 1987 (Reg. Sess., 1988), c. 1086, s. 96; 1989, c. 752, s. 66(a); 1993, c. 166, s. 1; c. 199, s. 4; 1995 (Reg. Sess., 1996), c. 716, s. 7; 1997-221, ss. 4(a), (b), 5, 7(a), 8, 9, 14, 17(a), (c); 1997-325, s. 1; 1997-383, s. 1; 1998-5, s. 5; 1998-131, s. 8; 1998-167, s. 1; 1999-96, s. 8; 2000-67, s. 9.2(a); 2001-129, s. 1; 2002-126, s. 7.39; 2003-284, s. 7.20(e); 2003-408, s. 1; 2004-124, s. 7.19(a); 2005-198, ss. 1, 2; 2005-205, s. 3; 2005-419, s. 1; 2007-166, s. 1; 2007-478, s. 1; 2007-484, s. 35; 2008-107, s. 7.8; 2009-59, s. 2; 2009-305, s. 1(b).)

Cross References. — As to the purpose of The Excellent Schools Act, Session Laws 1997-221, see the Editor's Note under G.S. 115C-105.38A.

Pilot Program Funding for Full-Time Mentors. — Session Laws 2001-424, ss. 28.18 (a) and (b), provide: "(a) The State Board of Education shall establish a pilot program to permit the Charlotte-Mecklenburg School Administrative Unit, the Forsyth County School Administrative Unit, and the Wake County School Administrative Unit to use funds allocated for mentors for full-time mentors.

"Funds allocated for mentors in these units shall be used only for teachers and instructional support personnel assigned to newly certified teachers, second-year teachers who were assigned mentors during the prior school year, or as authorized by Section 28.31 of this act [Session Laws 2001-424], and entry-level instructional support personnel who have not previously been teachers. These funds shall be used only for:

"(1) Salary supplements to teachers and instructional support personnel who are serving as mentors. The amount of the salary supplement shall not be based on the number of teachers or instructional support personnel to whom the mentor is assigned; or

"(2) Payments to teachers or instructional support personnel who are employed solely to serve as mentors. An individual employed solely to serve as a mentor shall receive a payment for each individual, up to 15 individuals, to whom the mentor is assigned. The amount of each such payment shall be the same as the amount of the salary supplement for a mentor.

"(b) The Charlotte-Mecklenburg Board of Education, the Forsyth County Board of Education, and the Wake County Board of Education shall report to the State Board of Education on an annual basis on the impact that the mentor program has had on retention of teachers. The State Board shall report on this information to the Joint Legislative Education Oversight Committee."

Session Laws 2003-284, s. 7.30(a)-(e), provides: "(a) The State Board of Education shall grant flexibility to a local board of education regarding the use of mentor funds to provide mentoring support, provided the local board submits a detailed plan on the use of the funds to the State Board and the State Board approves that plan. The plan shall include information on how all mentors in the local school administrative unit have been or will be adequately trained to provide mentoring support.

"Local boards of education shall use funds allocated for mentor teachers to provide mentoring support to all State-paid newly certified teachers, second-year teachers who were assigned mentors during the prior school year, and entry-level instructional support personnel who have not previously been teachers.

"(b) The State Board, after consultation with the Professional Teaching Standards Commission, shall adopt standards for mentor training.

"(c) The Winston-Salem/Forsyth, Charlotte/Mecklenburg, and Wake County Public School systems may continue with their existing pilot mentor programs, but shall submit plans as required in subsection (a) of this section. These three local boards of education shall report as required in subsection (d) of this section.

"(d) Each local board of education with a plan approved pursuant to subsection (a) of this section shall report to the State Board on the impact of its mentor program on teacher retention. The State Board shall analyze these reports to determine the characteristics of mentor programs that are most effective in retaining teachers and shall report its findings to the Joint Legislative Education Oversight Committee by October 15, 2004.

"(e) In addition to the report required in subsection (d) of this section, the State shall also evaluate the effectiveness of a representative sample of local mentor programs and report on its findings to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2004. The evaluation shall focus on quantitative evidence, quality of service delivery, and satisfaction of those involved. The report shall include the results of the evaluation and recommendations both for improving mentor programs generally and for an appropriate level of State support for mentor programs."

Session Laws 2005-276, ss. 7.21(a)-(d), provide: "(a) The State Board of Education shall grant flexibility to a local board of education regarding the use of mentor funds to provide mentoring support, provided the local board submits a detailed plan on the use of the funds to the State Board and the State Board approves that plan. The plan shall include information on how all mentors in the local school administrative unit have been or will be adequately trained to provide mentoring support.

"Local boards of education shall use funds allocated for mentor teachers to provide mentoring support to all State-paid newly certified teachers, second-year teachers who were assigned mentors during the prior school year, and entry-level instructional support personnel who have not previously been teachers.

"(b) The State Board, after consultation with the Professional Teaching Standards Commission, shall adopt standards for mentor training.

"(c) Each local board of education with a plan approved pursuant to subsection (a) of this section shall report to the State Board on the impact of its mentor program on teacher retention. The State Board shall analyze these reports to determine the characteristics of mentor programs that are most effective in retaining teachers and shall report its findings to the Joint Legislative Education Oversight Committee by October 15, 2006.

"(d) In addition to the report required in subsection (c) of this section, the State shall also evaluate the effectiveness of a representative sample of local mentor programs and report on its findings to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2006. The evaluation shall focus on quantitative evidence, quality of service delivery, and satisfaction of those involved. The report shall include the results of the evaluation and recommendations both for improving mentor programs generally and for an appropriate level of State support for mentor programs."

Editor's Note. — Session Laws 2006-264, s. 96.5, effective August 27, 2006, provided: "If House Bill 706, 2005 Regular Session, becomes law, then Section 1 of Session Laws 2005-198 [which amended G.S. 115C-296] is repealed." House Bill 706, 2005 Regular Session, was vetoed by the Governor on September 29, 2005, and never became law.

At the direction of the Revisor of Statutes, language from Session Laws 1997-221, s. 4(b), except for the last paragraph thereof, was codified as subsection (b1) of this section; the first two sentences of s. 8 were added as an undesignated third paragraph in subsection (b); all of s. 9 except the last sentence thereof was codified as subsection (e); the first two sentences of s. 14 were added as an undesignated fourth paragraph in subsection (b); and s. 17(a) and (c) were codified as subsection (f).

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 1998-131, s. 19, made the amendment by 1998-131, s. 8, effective July 1, 1998, only if funds more appropriated for the 1998-99 fiscal year to implement this act. The necessary appropriations were made.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Subsection (c), as rewritten by Session Laws 2005-198, s. 1, effective July 19, 2005, and applicable to provisional teaching certificates issued on or after that date.

Session Laws 2005-198, s. 4, provides: "The State Board of Education and the State Board of Community Colleges shall submit annually to the Joint Legislative Education Oversight Committee a report on the community college program of study for lateral entry teachers established under this act. The initial report is due no later than April 1, 2006. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should continue and, if so, must include the reasons for its continuation and any recommended legislative changes needed to enhance the program."

Session Laws 2005-198, which added subsection (c1), in s. 5, provided, in part: "Sections 2, 3, and 4 of this act expire July 1, 2011." Session Laws 2007-484, s. 35, amended Session Laws 2005-198, s. 5, by deleting the sunset provision.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-284, ss. 1 and 2, provide: "1. The General Assembly finds that additional data are needed to determine the adequacy with which the State's teacher education programs are preparing teachers to teach students with disabilities. The Board of Governors of The University of North Carolina, in consultation with the State Board of Education, shall study the effectiveness of the current teacher education programs in preparing new teachers to educate students with disabilities.

"2. The Board of Governors shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by May 15, 2008. The report shall include (i) evidence of the effectiveness of the current teacher education programs in preparing students to educate students with disabilities; (ii) documentation that the requirement for including specified demonstrated competencies in G.S. 115C-296(b) is being met; and (iii) identification of changes needed in teacher education programs to better prepare teachers to teach students with disabilities, and a timeline for the implementation of the changes."

Subsection (b2), as added by Session Laws 2005-419, s. 1, effective September 22, 2005, and applicable to students seeking admission to a teacher education program beginning with the 2006-2007 academic year.

Session Laws 2007-376, ss. 1 and 2 provide: "1. The State Board of Education shall adopt policies and procedures to pilot innovative programs for lateral entry teachers. A local school administrative unit, community college, or college or university may be granted approval by the State Board of Education to pilot an innovative program for lateral entry teachers. The Department of Public Instruction shall issue a license to all individuals who complete these approved programs who are recommended by the local school administrative unit, community college, or college or university and who otherwise meet licensure requirements. The policies and procedures shall be adopted no later than December 15, 2007.

"If a lateral entry teacher leaves a unit with an approved innovative program before completing the program and is hired to teach in another local school administrative unit in the State, that teacher shall receive credit for any work completed as part of the program.

"2. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the effectiveness of the pilot innovative programs by October 15, 2010. The reports shall include any recommendations regarding the continuation, expansion, or elimination of the pilot program."

Session Laws 2007-409, s. 1, provides: "The State Board of Education shall adopt a policy that requires:

"(1) Teachers of grades kindergarten through eight to take three renewal credits in their academic subject areas, including strategies to teach those subjects, during each five-year license renewal cycle and

"(2) Teachers in grades nine through twelve to take three credits in their academic subject areas, including strategies to teach those subjects, during each five-year license renewal cycle. For teachers who are in the fourth or fifth year of their current five-year license renewal cycle, this policy shall apply beginning with the first year of their next five-year license renewal cycle. The State Board may provide for exceptions to this policy for teachers seeking certification or renewal of certification by the National Board for Professional Teaching Standards."

Session Laws 2008-107, s. 7.8, as amended by Session Laws 2009-305, s. 1(b), was codified as subsection (e1) of this section at the direction of the Revisor of Statutes.

Session Laws 2009-451, s. 7.21(a) and (b), provide: "(a) The State Board of Education shall:

"(1) Review the lateral entry program and identify and remove from it barriers to the lateral entry of skilled individuals from the private sector into the teaching profession;

"(2) Reduce the coursework requirements for lateral entry by consolidating the required competencies into fewer courses and fewer semester hours of coursework; and

"(3) Provide additional opportunities for individuals to complete coursework online and at community colleges."

"(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2010, on its implementation of this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-59, s. 2, effective June 5, 2009, added the third paragraph of subsection (b).

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

CASE NOTES

As to the constitutionality of regulation requiring teachers to renew teaching certificates every five years, promulgated under former Chapter 115, see Guthrie v. Taylor, 279

N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Speech Pathologists. — State Board of Education does not have the power to credential speech pathologists pursuant to their regulatory authority over the qualifications of school employees; the Licensure Act for Speech and Language Pathologists and Audiologists (G.S. 90-292) alone governs the qualification of persons practicing speech pathology, no matter what the setting. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996), aff'd, 345 N.C. 493, 480 S.E.2d 50 (1997).

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001).

OPINIONS OF ATTORNEY GENERAL

Salary and Hours of Certified Employees. — N.C. Const., Art. IX, § 5 and G.S. 115C-12(9), 115C-272(a), 115C-284(c), and 115C-315(d) and this section give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

§ 115C-296.1. (For expiration see Editor's Note) Teacher shortages; certification.

(a) Notwithstanding any other law, if a local board determines there is or anticipates there will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels, then the local board may employ as teachers individuals who do not meet the State Board's requirements for initial or continuing State certification. The local board may employ an individual under this subsection for up to one year under a provisional certificate so long as:

(1) Each individual has a postsecondary degree that is at least a bachelors degree.

(2) Each individual has:

  a. An out-of-State certificate authorizing the individual to teach the grade or subject to be taught and at least one year of classroom teaching experience the board considers relevant to the grade or subject to be taught;

  b. At least one year of full-time classroom teaching experience as a professor, assistant professor, associate professor, instructor, or visiting lecturer at a constituent institution of The University of North Carolina, a North Carolina community college, or other institution of higher education as defined in G.S. 90-270.2(5) provided the board considers the experience relevant to the grade or subject to be taught; or

  c. Three years of other experience provided the board determines that both the individual's experience and postsecondary education are relevant to the grade or subject to be taught.

(3) Each individual is eligible for re-employment by his or her prior employer.

(4) The board has developed a plan to determine the individual's competence as a teacher. The board's plan shall include a review of the performance of students taught by the individual.

(5) During the period of employment under this subsection, the board provides a mentor teacher if the individual does not have a year of classroom teaching experience.

(6) During the period of employment under this subsection, the individual receives an annual evaluation and multiple observations under G.S. 115C-333(a).

(b) A local board may re-employ as a teacher an individual the board initially employed under subdivision (a)(2)a of this section. This individual is then deemed to have satisfied the academic and professional preparation required to receive an initial or continuing State teacher certificate and is not required to take and pass a standard examination to demonstrate that preparation. An individual who receives an initial or continuing State certificate under this subsection is subject to the same requirements for continuing certification and certificate renewal as other teachers who hold initial or continuing State teacher certificates.

(c) A local board may re-employ as a teacher an individual the board initially employed under subdivisions (a)(2) b and (a)(2) c of this section. If the individual, either prior to initial employment or within one year after initial employment, takes and passes the standard examination adopted by the State Board under G.S. 115C-296(a) that is or was applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual is deemed to have satisfied the academic and professional preparation required to receive an initial State teacher certificate. An individual who receives an initial certificate under this subsection is subject to the same requirements for continuing certification as other teachers who hold initial State teacher certificates. If the individual, within one year of the initial employment, does not take and pass the standard examination adopted by the State Board under G.S. 115C.296(a) that is applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual shall continue to hold a provisional certificate and is subject to G.S. 115C-296(c).

(d) Local boards shall report semi-annually to the State Board the number of individuals employed as teachers under each sub-subdivision of subdivision (2) of subsection (a) of this section. (1998-226, s. 1; 1999-108, s. 1; 2002-126, s. 7.24; 2004-124, s. 7.19(b).)

Editor's Note. — Session Laws 1998-226, s. 2, as amended by Session Laws 2002-126, s. 7.24, makes this section effective November 5, 1998, and provides for its expiration September 1, 2006, except that it remains effective for any teacher employed under this act before September 1, 2006.

§ 115C-296.2. (Effective until July 1, 2010) National Board for Professional Teaching Standards Certification.

(a) State Policy. — It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process

G.S. 115C-296.2 is set out twice. See notes.

of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. — As used in this subsection:

(1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.

(2) A "teacher" is a person who:
- a. Either:
  - 1. Is certified to teach in North Carolina; or
  - 2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
- b. Is a State-paid employee of a North Carolina public school;
- c. Is paid on the teacher salary schedule; and
- d. Fulfills one of the following:
  - 1. Spends at least seventy percent (70%) of his or her work time in classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers;
  - 2. Spends at least seventy percent (70%) of his or her work time in work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction; or
  - 3. Serves as a full-time mentor under subsection (e1) of this section.

(c) Payment of the NBPTS Participation Fee; Paid Leave. — The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

(1) Have completed three full years of teaching in a North Carolina public school; and

(2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. — A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. — A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e1) Assignment of Teachers With NBPTS Certification to Serve as Full-Time Mentors. — A local board of education may assign teachers with NBPTS certification to serve as full-time mentors as follows:

(1) The maximum number of teachers with NBPTS certification that a local board of education may assign to serve as full-time mentors is the greater of (i) five or (ii) five percent (5%) of the number of teachers with NBPTS certification it has employed during the school year immediately preceding the assignment of teachers as full-time mentors.

(2) A teacher must teach in a classroom for at least two years after receiving NBPTS certification to be eligible for assignment as a full-time mentor.

(3) A teacher must have completed the mentor training required by the teacher's local school administrative unit to be eligible for assignment as a full-time mentor.

(4) A teacher may serve as a full-time mentor for up to three consecutive years.

(5) After service as a full-time mentor, a teacher must teach in a classroom for at least three years to be eligible for reassignment as a full-time mentor.

(6) A teacher serving as a full-time mentor shall be school-based, work at one or more schools, and mentor each year at least 15 newly hired teachers who are in their first through third year of teaching.

(f) Rules. — The State Board shall adopt policies and guidelines to implement this section. (2000-67, s. 8.16; 2000-137, s. 3; 2008-86, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 2010. For this section as amended July 1, 2010, see the following section, also numbered G.S. 115C-296.2.

Editor's Note. — Session Laws 2007-323, ss. 7.23(a) and (b), provides: "(a) Funds are appropriated in this act to support the selection and hiring of new literacy coaches for middle schools or other public schools with an eighth grade class. No more than one literacy coach shall be placed in each such school. The State Board of Education, in consultation with the North Carolina Teacher Academy, shall develop a site selection process including formal criteria. The site must receive formal approval by the State Board of Education to receive funds for this purpose. To be selected schools must:

"(1) Contain an eighth grade class, and

"(2) Ensure that literacy coaches will have no administrative responsibilities in the schools in which they are placed.

"(b) National Board for Professional Teaching Standards (NBPTS) certified teachers serving in these positions shall be exempt from the requirements in G.S. 115C-296.2(b)(2)d. and shall remain on the NBPTS teacher salary schedule."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007 2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007 2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-445, s. 1(a)-(c), provides: "(a) The State Board of Education shall designate schools which meet two or more of the following criteria as high-need schools:

"(1) More than forty-five percent (45%) of students perform at Level 1 or Level 2 on end-of-grade or end-of-course tests,

"(2) Teacher turnover rate is greater than twenty-five percent (25%), or

"(3) More than eighty percent (80%) of students qualify for free or reduced-price lunches.

"(b) Beginning with the 2008-2009 school year, to ensure that the schools designated as high-need schools by the State Board of Education have the high quality staff and the additional support they need, the following modifications to law, policy, or both shall apply:

"(1) National Board Certified Teachers who serve as mentors, literacy coaches, or in other nonadministrative instructional leadership positions at these schools shall retain the twelve percent (12%) salary increment for NBPTS certification, notwithstanding G.S. 115C-296.2.

"(2) National Board Certified Teachers, teachers of the year, and other categories of accomplished teachers designated by the State Board of Education shall be given the academic freedom at these schools to use research-based practices in the classroom that go beyond the standard course of study.

"(c) The State Board of Education shall consider the following strategies to ensure that the high-need schools have the high quality staff and the additional support they need and shall report by January 15, 2008, to the Joint Legislative Education Oversight Committee on the cost of implementing for the 2008-2009 fiscal year:

"(1) Adding additional teacher positions at these schools to reduce class size.

"(2) Providing incentives to attract National Board Certified Teachers to these schools.

"(3) Employing teachers at these schools for 11 months. These teachers shall use the extra month of employment for curriculum development, staff development, and planning for the next school year."

Session Laws 2008-86, s. 2, provides: "Teachers with NBPTS certification serving as full-time mentors under G.S. 115C-296.2(e1) shall remain on the NBPTS teacher salary schedule."

Session Laws 2008-86, s. 3, provides: "The State Board of Education shall monitor and assess the effectiveness and impact of allowing teachers with NBPTS certification to serve as full-time mentors and shall report its findings to the Joint Legislative Education Oversight Committee prior to April 15, 2010."

Effect of Amendments. — Session Laws 2008-86, s. 1, effective July 1, 2008, rewrote subdivision (b)(2)d. and added subsection (e1).

CASE NOTES

Not Limited to Classroom Teachers. — Contention that the teaching coordinator was not eligible for the substantial salary increase that accompanied the teaching coordinator's attainment of national certification because the teaching coordinator was not a "teacher" pursuant to the relevant statute had to be rejected; not only did the teaching coordinator qualify under the broad language of the relevant statute, but the contention that the purpose of the statute was to retain teachers in the classroom was incorrect since the General Assembly stated that its purpose was to encourage excellence and retain excellent teachers in the teaching profession, which meant that the salary increase for obtaining national certification was not limited solely to "classroom teachers." Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007), rev'd, remanded, 361 N.C. 679, 652 S.E.2d 251 (2007), Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007).

Incentive Eligibility. — Trial court erred, in conducting its de novo review, in determining that the teaching coordinator was not entitled to a substantial salary increase for obtaining national certification after the teaching coordinator was informed that the teaching coordinator would be eligible if the teaching coordinator obtained national certification, the teaching coordinator obtained national certification, and the teaching coordinator was informed that the teaching coordinator was not eligible for the salary increase; G.S. 115C-296.2(b) contained language broad enough to include the teaching coordinator as a person eligible for the increase and the teaching coordinator otherwise met all of the statutory requirements for the increase. Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007), rev'd, remanded, 361 N.C. 679, 652 S.E.2d 251 (2007), Rainey v. N.C. Dep't of Pub. Instruction, 181 N.C. App. 666, 640 S.E.2d 790, 2007 N.C. App. LEXIS 396 (2007).

While a superior court, as part of its de novo review under G.S. 150B-51(c) of a state board of education decision to deny petitioner a salary increase under G.S. 115C-296.2(b), was entitled to defer to the board's expertise, petitioner was entitled to the salary increase on the merits as petitioner was granted certification by the National Board for Professional Teaching Standards. Rainey v. N.C. Dep't of Pub. Instruction, — N.C. App. —, 667 S.E.2d 237, 2008 N.C. App. LEXIS 1761 (2008).

§ 115C-296.2. (Effective July 1, 2010) National Board for Professional Teaching Standards Certification.

(a) State Policy. — It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, lending teachers the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. — As used in this subsection:

(1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.

(2) A "teacher" is a person who:
   a. Either:
      1. Is certified to teach in North Carolina; or
      2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
   b. Is a State-paid employee of a North Carolina public school;
   c. Is paid on the teacher salary schedule; and
   d. **(Effective until June 30, 2011)** Fulfills one of the following:
      1. Spends at least seventy percent (70%) of his or her work time in classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers;
      2. Spends at least seventy percent (70%) of his or her work time in work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction; or

G.S. 115C-296.2 is set out twice. See notes.

3. Serves as a full-time mentor under subsection (e1) of this section.

d. **(Effective June 30, 2011)** Spends at least seventy percent (70%) of his or her work time:

1. In classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers; or
2. In work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction.

(c) Payment of the NBPTS Participation Fee; Paid Leave. — The State shall lend teachers the participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

(1) Have completed three full years of teaching in a North Carolina public school; and

(2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repealed by Session Laws 2009-451, s. 7.30(b), effective July 1, 2010, and applicable beginning with the 2010-2011 school year.

(d1) Repayment of the Application Fee. — A teacher shall repay the application fee to the State Education Assistance Authority within three years.

All funds appropriated to, or otherwise received by, the Authority to provide loans to teachers pursuant to this section, all funds received as repayment of loans, and all interest earned on these funds shall be placed in a trust fund. This fund shall be used only for loans made pursuant to this section and administrative costs of the Authority.

(e) Repealed by Session Laws 2009-451, s. 7.30(b), effective July 1, 2010, and applicable beginning with the 2010-2011 school year.

(e1) **(Repealed effective June 30, 2011)** Assignment of Teachers With NBPTS Certification to Serve as Full-Time Mentors. — A local board of education may assign teachers with NBPTS certification to serve as full-time mentors as follows:

(1) The maximum number of teachers with NBPTS certification that a local board of education may assign to serve as full-time mentors is the greater of (i) five or (ii) five percent (5%) of the number of teachers with NBPTS certification it has employed during the school year immediately preceding the assignment of teachers as full-time mentors.

(2) A teacher must teach in a classroom for at least two years after receiving NBPTS certification to be eligible for assignment as a full-time mentor.

(3) A teacher must have completed the mentor training required by the teacher's local school administrative unit to be eligible for assignment as a full-time mentor.

(4) A teacher may serve as a full-time mentor for up to three consecutive years.

(5) After service as a full-time mentor, a teacher must teach in a classroom for at least three years to be eligible for reassignment as a full-time mentor.

G.S. 115C-296.2 is set out twice. See notes.

(6) A teacher serving as a full-time mentor shall be school-based, work at one or more schools, and mentor each year at least 15 newly hired teachers who are in their first through third year of teaching.

(f) Rules. — The State Education Assistance Authority shall adopt rules and guidelines regarding the loan and repayment of the NBPTS application fee. The State Board shall adopt policies and guidelines to implement the remainder of this section. (2000-67, s. 8.16; 2000-137, s. 3; 2008-86, s. 1; 2009-451, ss. 7.30(b), 7.41(a); 2009-575, s. 3H.)

Section Set Out Twice. — The section above is effective July 1, 2010. For the section as effective until July 1, 2010, see the preceding section, also numbered G.S. 115C-296.2.

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Session Laws 2008-86, s. 1, which rewrote subdivision (b)(2)d. and added subsection (e1), effective July 1, 2008, was repealed by Session Laws 2009-451, s. 7.41, as amended by Session Laws 2009-575, s. 3H, effective June 30, 2011. The second version of subdivision (b)(2)d does not contain 2008 amendments. Subsection (e1) is repealed effective June 30, 2011.

Effect of Amendments. — Session Laws 2009-451, s. 7.30(b), effective July 1, 2010, and applicable beginning with the 2010-2011 school year, in subsection (a), substituted "lending teachers the participation fee" for "paying the participation fee" near the middle; in subsection (c), in the introductory language, substituted "lend teachers the participation fee" for "pay the NBPTS participation fee"; deleted subsection (d), regarding repayment of participation fees; added subsection (d1); deleted subsection (e), regarding repayment by a teacher who does not teach for a year after completing the process; and in subsection (f), added the present first sentence, and inserted "the remainder of" in the second sentence.

§ 115C-296.3: Expired June 30, 2004, by operation of Session Laws 2003-284, s. 7.20(h).

§ 115C-296.4. North Carolina Teacher Academy Board of Trustees.

(a) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs. This network shall include professional development programs that focus on teaching strategies for teachers assigned toat-risk schools.

(b) Repealed by Session Laws 2006, c. 66, s. 9.17(c).

(c) The Board of Trustees shall consist of 20 members appointed as follows:

(1) The Superintendent of Public Instruction or the Superintendent's designee;

(2) One member of the State Board of Education appointed by the Chairof the State Board;

(3), (4) Repealed by Session Laws 2006, c. 66, s. 9.17(c).

(5) One dean of a School of Education from one of the constituent institutions, appointed by the Governor;

(6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;

(7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in

accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches in grades 9 through 12;

(8) Three public school teachers appointed by the Governor;

(9) One superintendent of a local school administrative unit appointed by the Governor;

(10) Two public school principals appointed by the Governor; and

(11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.

(12) Two at-large members appointed by the Governor.

(d) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms. The two new members under subdivision (c)(12) of this section shall serve initial terms beginning January 1, 2007, and ending June 30, 2010. The additional member appointed under subdivision (c)(8) of this section shall serve a term beginning January 1, 2007, and ending June 30, 2010. The designation of two deans serving under subdivision (c)(5) of this section shall expire December 31, 2006, and the Governor shall make a new appointment under that subdivision for a term beginning January 1, 2007, andending June 30, 2010.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. Avacancy in a legislative appointment shall be filled in accordance with G.S.120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(e) The chief administrative officer of the Teacher Academy shall be an executive director appointed by the Board of Trustees.

(f) Repealed by Session Laws 2006-66, s. 9.17(c).

(g) The North Carolina Teacher Academy shall report annually on or before October 1 to the Joint Legislative Education Oversight Committee its expenditures for the prior fiscal year. (1995, c. 324, s. 17.9; 2001-424, s. 28.28(a); 2006-66, s. 9.17(c), (f))

Editor's Note. — This section was formerly codified as G.S. 116-30.01. It was recodified as G.S. 115C-296.4 by Session Laws 2006-66, s.9.17(c), effective January 1, 2007, except that the General Assembly and the Governor may make appointments prior to that date for terms to begin January 1, 2007.

Session Laws 2006-66, s. 9.17(f) was codified as subsection (g) of this section, effective July 10, 2006, at the direction of the Revisor of Statutes. Pursuant to the terms of Session Laws 2006-66, s. 9.17(f), the first report required by subsection (g) of this section shall bedue no later than October 1, 2006, covering expenditures for the 2005-2006 fiscal year.

Session Laws 2006-66, 9.17(d), provides: "The North Carolina Teacher Academy and all resources, assets, liabilities, operations, and personnel are transferred and shall be located administratively under the State Board of Education but shall exercise its powers and duties independently of the State Board of Education through its own board of trustees. This transfer shall have all of the elements of a Type II transfer, as that term is defined in G.S. 143A-6(b). Where a conflict arises regarding the transfer, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final."

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 115C-296.5. North Carolina Center for the Advancement of Teaching; powers and duties of trustees; reporting requirement.

(a) The North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, shall:

(1) Provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; and

(2) Offer opportunities for teachers to engage in scholarly pursuits through a center dedicated exclusively to the advancement of teaching as an art and as a profession.

(b) Priority for admission to NCCAT opportunities shall be given to teachers with teaching experience of 15 years or less.

(c) NCCAT may also provide training and support for beginning teachers to enhance their skills and in support of the State's effort to recruit and retain beginning teachers.

(d) The Board of Trustees of the North Carolina Center for the Advancement of Teaching shall hold all the powers and duties necessary or appropriate for the effective discharge of the functions of NCCAT.

(e) The Executive Director shall submit a copy of the NCCAT annual report to the Chair of the State Board of Education at the time of issuance. (1985, c. 479, s. 74; 2006-66, s. 9.15(a); 2009-451, ss. 9.13(b), (c).)

Editor's Note. — This section was enacted as G.S. 116-74.6. It has been recodified as G.S. 115C-296.5 by Session Laws 2009-451, s. 9.13(b).

Session Laws 2009-451, s. 9.13(a), provides: "The North Carolina Center for the Advancement of Teaching (NCCAT) is transferred from the Board of Governors of The University of North Carolina to the State Board of Education. The Center shall be located administratively under the State Board of Education but shall exercise its powers and duties through its own board of trustees. The board of trustees shall have full authority regarding all aspects of employment and contracts for the North Carolina Center for the Advancement of Teaching in accordance with State personnel policies and contract procedures.

"This transfer shall include (i) ownership, possession, and control of its properties located at Cullowhee and Ocracoke, including buildings, grounds, personal property, vehicles, and equipment and (ii) the resources, assets, liabilities, and operations maintained, possessed, or controlled by the North Carolina Center for the Advancement of Teaching prior to the transfer.

"Upon the transfer, all duties and responsibilities of The University of North Carolina regarding NCCAT, including Western Carolina University, shall cease except as may be agreed upon by The University of North Carolina, Western Carolina University, the State Board of Eduation, and NCCAT; provided, however, that these parties shall work cooperatively in coordination with appropriate State agencies to effect an efficient and orderly transfer of duties and responsibilities to be completed on or before November 1, 2009.

"The State shall reallocate to Western Carolina University the land grant that is the original parcel of NCCAT real property located in Cullowhee if it is no longer used or occupied by NCCAT."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 9.13(c), effective July 1, 2009, rewrote the section.

§ 115C-296.6. Composition of board of trustees; terms; officers.

(a) The NCCAT Board of Trustees shall be composed of the following membership:

(1) Two ex officio members: the Chairman of the State Board of Education and the State Superintendent of Public Instruction or their designees;
(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
(4) Eight members appointed by the Governor, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(c) The chief administrative officer of NCCAT shall be an executive director who shall be appointed by the NCCAT Board of Trustees. (1985, c. 479, s. 74; 1995, c. 490, s. 2; 2006-66, s. 9.15(b); 2009-451, s. 9.13(d), (e).)

Editor's Note. — This section was enacted as G.S. 116-74.7. It has been recodified as 115C-296.6 by Session Laws 2009-451, s. 9.13(d).

Session Laws 2009-451, s. 9.13(g), provides: "Existing appointed members of the NCCAT Board of Trustees shall continue to serve until their current terms expire. Their successors shall be appointed as provided in G.S. 115C-296.6, as recodified and rewritten by subsections (d) and (e) of this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 9.13(e), effective July 1, 2009, in subdivision (a)(1), substituted "Two ex officio members: the Chairman of the State Board of Education and the State Superintendent of Public Instruction or" for "Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University, or"; in subdivision (a)(4), substituted "the Governor" for "the Board of Governors"; in subsection (b), substituted "chair" for "chairman" and "Chairman"; and rewrote subsection (c).

§ 115C-297: Repealed by Session Laws 1989, c. 385, s. 2.

§ 115C-298: Repealed by Session Laws 1997-18, s. 9.

§ 115C-299. Hiring of teachers.

(a) In the city administrative units, teachers shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

Teachers shall be elected by the county and city boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) No person otherwise qualified shall be denied the right to receive credentials from the State Board of Education, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school on the grounds that such person is totally or partially blind; nor shall any local board of education refuse to employ such a person on such grounds. (1955, c. 1372, art. 5, s. 4; 1971, c. 949; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 5.)

CASE NOTES

***Editor's Note.** — Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Final Authority for Election of Teachers Vested in Board. — The superintendent makes recommendations, but the final authority for the election of teachers is vested in the school board. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Superintendent Entitled to Recommend Against Rehiring. — A school board's failure to renew a probationary teacher's contract because the principal and superintendent recommended that he not be rehired would not be arbitrary, capricious, or for personal reasons, since the superintendent is entitled to make such recommendations. Hasty v. Bellamy, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

No Claim Based on Failure to Renew Contract. — Plaintiff stated no claim for relief against a school superintendent and principal in an action to recover damages arising from failure to renew plaintiff's contract as a teacher, since the power to hire teachers rests in the school board. Hasty v. Bellamy, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

Cited in Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

§ 115C-300. In-service training.

Local boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1955, c. 1372, art. 5, s. 29; 1981, c. 423, s. 1.)

§ 115C-301. Allocation of teachers; class size.

(a) Request for Funds. — The State Board of Education, based upon the reports of local boards of education and such other information as the State Board may require from local boards, shall determine for each local school administrative unit the number of teachers and other instructional personnel to be included in the State budget request.

(b) Allocation of Positions. — The State Board of Education is authorized to adopt rules to allot instructional personnel and teachers, within funds appropriated.

(c) Maximum Class Size. — The average class size for each grade span in a local school administrative unit shall at no time exceed the funded allotment ratio of teachers to students. At the end of the second school month and for the remainder of the school year, the size of an individual class shall not exceed the allotment ratio by more than three students. At no time may the General Assembly appropriate funds for higher unit-wide class averages than those for which State funds were provided during the 1984-85 school year.

(d) Maximum Teaching Load. — Students shall be assigned to classes so that from the 15th day of the school year through the end of the school year the number of students for whom teachers in grades 7 through 12 are assigned teaching responsibilities during the course of the day is no more than 150 students, except as provided in subsection (g) of this section.

(e) Alternative Maximum Class Sizes. — The State Board of Education, in its discretion, may set higher maximum class sizes and daily teaching loads for classes in music, physical education, and other similar subjects, so long as the effectiveness of the instructional programs in those areas is not thereby impaired.

(f) Second Month Reports. — At the end of the second month of each school year, each local board of education, through the superintendent, shall file a report for each school within the school unit with the State Board of Education. The report shall be filed in a format prescribed by the State Board of Education and shall include the organization for each school, the duties of each teacher, the size of each class, the teaching load of each teacher, and such other information as the State Board may require. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(g) Waivers and Allotment Adjustments. — Local boards of education shall report exceptions to the State Board of Education as provided in G.S. 115C-47(10), and shall request allotment adjustments or waivers from the standards set out above. Within 45 days of receipt of reports, the State Board of Education, within funds available, may allot additional positions or grant waivers for the excess class size or daily load.

(1) If the exception resulted from (i) exceptional circumstances, emergencies, or acts of God, (ii) large changes in student population, (iii) organizational problems caused by remote geographic location, or (iv) classes organized for a solitary curricular area, and

(2) If the local board cannot organizationally correct the exception.

All allotment adjustments and waivers submitted under this provision shall be reported to the Director of the Budget and to the General Assembly by May 15 of each year.

(h) State Board Rules. — The State Board of Education shall adopt rules necessary for the implementation of class size and teaching load provisions.

(i) Penalty for Noncompliance. — If the State Board of Education determines that a local superintendent has willfully failed to comply with the requirements of this section, no State funds shall be allocated to pay the superintendent's salary for the period of time the superintendent is in noncompliance. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, ss. 12, 13; 1985, c. 479, s. 55(b)(3)b; 1987, c. 738, s. 181; 1987 (Reg. Sess., 1988), c. 1025, s. 15; c. 1086, s. 89(a).)

Cross References. — As to the allotment of classified principals, see G.S. 115C-284.

Editor's Note. — Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 8.8, effective July 1, 2000, authorizes local school administrative units to use teacher positions allocated for kindergarten through second grade (i) to hire classroom and reading teachers for those grades and (ii) to otherwise reduce the student-teacher ratio in those grades. Notwithstanding the provisions of G.S. 115C-301(c), both the maximum average class size for the grade span kindergarten, first grade, and second grade, and the maximum size of an individual class within the grade span is to be 26 students.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2009-451, s. 7.8(b), provides: "For fiscal years 2009-2010 and 2010-2011, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate with the goal of protecting direct classroom services and services for students at risk and children with special needs. Local school administrative units shall implement administrative and other operating efficiencies and minimize the dismissal of classroom-based personnel by maximizing funds received from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Allocation of teachers and class size requirements in grades K-3 shall remain unchanged."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Jurisdiction. — Because the legislature failed to provide for judicial review of suspensions of 10 days or less, there is no jurisdiction for review in this statute of more general applicability. Stewart v. Johnston County Bd. of Educ., 129 N.C. App. 108, 498 S.E.2d 382 (1998).

§ 115C-301.1. Duty-free instructional planning time.

All full-time assigned classroom teachers shall be provided duty-free instructional planning time during regular student contact hours. The duty-free instructional planning time shall be provided to the maximum extent that (i) the safety and proper supervision of children may allow during regular student contact hours and (ii) insofar as funds are provided for this purpose by the General Assembly. If the safety and supervision of children does not allow duty-free instructional planning time during regular student contact hours for a given teacher, the funds provided by the General Assembly for the duty-free instructional planning time for that teacher shall revert to the general fund. Principals shall not unfairly burden a given teacher by making that teacher give up his or her duty-free instructional planning time on an ongoing, regular basis without the consent of the teacher. (1983, c. 761, s. 88; 1999-163, s. 1; 2006-153, s. 3.)

Editor's Note. — Session Laws 2005-276, s. 7.30, provides: "The State Board of Education shall report on best practices from North Carolina schools for providing a minimum of five hours per week within the instructional day for planning, collaborating with colleagues and parents, and professional development, especially within elementary school schedules. The State Board shall submit its report to the Education Cabinet and to the Joint Legislative Education Oversight Committee by January 15, 2006.

"The State Board shall disseminate this information about best practices to schools and school systems across the State."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-153, s. 3, effective July 1, 2006, and applicable to school improvement plans beginning with the 2007-2008 school year, substituted "Duty-free instructional planning time" for "Duty free period" in the section heading; substituted "duty-free instructional planning time" for "duty free period" throughout the section, and deleted "a daily" preceding "duty" in two places.

CASE NOTES

No Private Cause of Action. — Trial court properly dismissed the teachers' request for declaratory relief against the county school board under G.S. 115C-84.2 and G.S. 115C-301.1 as the teachers failed to plead all the facts necessary to disclose the existence of an actual controversy between the parties; furthermore, neither section expressly or implicitly created a private cause of action for the teachers. Lea v. Grier, 156 N.C. App. 503, 577 S.E.2d 411, 2003 N.C. App. LEXIS 238 (2003).

§ 115C-302: Repealed by Session Laws 1997-443, s. 8.38(d).

Editor's Note. — This section was amended by Session Laws 1997-456, s. 17, effective August 29, 1997. Because of the repeal by Session Laws 1997-443, s. 8.38(d), the amendment was not given effect.

§ 115C-302.1. Salary.

(a) Prompt Payment. — Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted teachers are paid.

(b) Salary Payments. — State-allotted teachers shall be paid for a term of 10 months. State-allotted months of employment for vocational education to local boards shall be used for the employment of teachers of vocational and technical education for a term of employment to be determined by the local boards of education. However, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter. In addition, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 2003-2004 school year for any school year thereafter.

Each local board of education shall establish a set date on which monthly salary payments to State-allotted teachers shall be made. This set pay date may differ from the end of the month of service. The daily rate of pay for teachers shall equal midway between one twenty-first and one twenty-second of the monthly rate of pay. Except for teachers employed in a year-round school or paid in accordance with a year-round calendar, or both, the initial pay date for teachers shall be no later than August 31 and shall include a full monthly payment. Subsequent pay dates shall be spaced no more than one month apart and shall include a full monthly payment.

Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher who fails to attend scheduled workdays or who has not worked the number of days for which the teacher has been paid and who resigns, is dismissed, or whose contract is not renewed shall repay to the local board any salary payments received for days not yet worked. A teacher who has been prepaid and continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325 or other appropriate discipline.

Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. The request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease the teacher's annual salary nor in any other way alter the contract made between the teacher and the local school administrative unit. Teachers employed for a period of less than 10 months shall not receive their salaries in 12 installments.

Notwithstanding this subsection, the term "daily rate of pay" for the purpose of G.S. 115C-12(8) or for any other law or policy governing pay or benefits based on the teacher salary schedule shall not exceed one twenty-second of a teacher's monthly rate of pay.

(b1) The State Board of Education shall maintain the same policies related to masters pay for teachers that were in effect for the 2008-2009 fiscal year.

(c) Vacation. — Included within the 10-month term shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth of the annual rate for State employees for each month of employment. Local boards shall provide at least 10 days of annual vacation leave at a time when students are not scheduled to be in regular attendance. However, instructional personnel who do not require a substitute may use annual vacation leave on days that students are in attendance. Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual vacation leave days designated in the school calendar and may use those annual vacation leave days during the eleventh or twelfth month of employment.

On a day that pupils are not required to attend school due to inclement weather, but employees are required to report for a workday, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the teacher and the teacher's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, a teacher shall work on the scheduled makeup day.

All vacation leave taken by the teacher will be upon the authorization of the teacher's immediate supervisor and under policies established by the local board of education. Annual vacation leave shall not be used to extend the term of employment.

Notwithstanding any provisions of this subsection to the contrary, no person shall be entitled to pay for any vacation day not earned by that person.

(c1), (c2) Repealed by Session Laws 2002-126, s. 7.11(a), effective July 1, 2002, and applicable only to leave days accruing after September 30, 2002.

(c3) Teachers may accumulate annual vacation leave days without any applicable maximum until June 30 of each year. In order that only 30 days of annual vacation leave carry forward to July 1, on June 30 of each year any teacher or other personnel paid on the teacher salary schedule who has accumulated more than 30 days of annual vacation leave shall convert to sick leave the remaining excess accumulation.

Upon separation from service due to service retirement, resignation, dismissal, reduction in force, or death, an employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 30 days. In addition to the maximum of 30 days pay for accumulated annual leave, upon separation from service due to service retirement, any teacher or other personnel paid on the teacher salary schedule with more than 30 days of accumulated annual vacation leave may convert some or all of the excess accumulation to sick leave for creditable service towards retirement. Employees going onto term disability may exhaust annual leave rather than be paid in a lump sum.

(d) Personal Leave. — Teachers earn personal leave at the rate of .20 days for each full month of employment not to exceed two days per year. Personal leave may be accumulated without any applicable maximum until June 30 of each year. A teacher may carry forward to July 1 a maximum of five days of personal leave; the remainder of the teacher's personal leave shall be converted to sick leave on June 30. At the time of retirement, a teacher may also convert accumulated personal leave to sick leave for creditable service towards retirement.

Personal leave may be used only upon the authorization of the teacher's immediate supervisor. A teacher shall not take personal leave on the first day the teacher is required to report for the school year, on a required teacher workday, on days scheduled for State testing, or on the day before or the day after a holiday or scheduled vacation day, unless the request is approved by the principal. On all other days, if the request is made at least five days in advance, the request shall be automatically granted subject to the availability of a substitute teacher, and the teacher cannot be required to provide a reason for the request. Teachers may transfer personal leave days between local school administrative units. The local school administrative unit shall credit a teacher who has separated from service and is reemployed within 60 months from the date of separation with all personal leave accumulated at the time of separation. Local school administrative units shall not advance personal leave. Teachers using personal leave receive full salary less the required substitute deduction, except for teachers using personal leave on non-protected teacher workdays. Teachers using personal leave on non-protected teacher workdays shall receive full salary.

(e) Teachers in Year-Round Schools. — Compensation for teachers employed in year-round schools shall be the same as teachers paid for a 10-month term, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity for teachers who are employed at year-round schools shall be equivalent to those of other teachers employed for the same number of months, respectively. Teachers paid for a term of 10 months in year-round schools shall receive their salary in 12 equal installments.

(f) Overpayment. — Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.

(g) Service in Armed Forces. — The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(g1) Payment During Military Duty. — The State Board of Education shall adopt rules relating to leaves of absence, without loss of pay or time, for periods of military training and for State or federal military duty or for special emergency management service. The rules shall apply to all public school employees, including, but not limited to, school teachers, administrators, guidance counselors, speech language pathologists, nurses, and custodians employed by local boards of education or by charter schools. The rules shall provide that (i) the State pays any salary differential to all public school employees in State-funded positions, (ii) the employing local board of education pays any pay differential to all public school employees in locally funded positions, (iii) the employing charter school pays any pay differential to all public school employees in the charter school, and (iv) the employing local board of education pays the local supplement.

(h) Teachers Paid From Other Funds. — Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system. If a local board of education does not adopt a local salary schedule, the State salary schedule shall apply. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

When a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason. A board of education may authorize the superintendent to supplement the salaries of all teachers from local funds, and the minutes of the board shall show what increase is allowed each teacher.

(i) Longevity Pay. — Longevity pay shall be based on the annual salary on the employee's anniversary date.

(j) Parental Leave. — A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. A teacher may also use up to 30 days of sick leave to care for a child placed with the teacher for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise. (1997-443, s. 8.38(e); 1999-237, s. 28.26(a), (b); 2002-126, s. 7.11(a); 2002-159, s. 37.5(a); 2003-301, s. 1; 2004-124, s. 7.20; 2004-180, s. 2; 2007-378, s. 1; 2008-107, s. 26.21(a); 2008-187, s. 45.5; 2008-209, ss. 1(a), 2; 2009-451, s. 7.35.)

Local Modification. — Tyrrell County Board of Education: 2000-67, s. 8.29.

Editor's Note. — Session Laws 2004-180, s. 2, which amended this section, is applicable in all 100 counties and in all local administrative units to school years beginning with the 2005-2006 school year.

Session Laws 2004-180, s. 3, provides: "For certified and noncertified employees employed on or after the effective date of this act, the annual rate of pay beginning with the 2005-2006 school year shall not be reduced as the result of this act. Furthermore, nothing in this act shall be construed to change the pay cycle for noncertified employees. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on local compliance with this section."

Session Laws 2004-180, s. 5, provides: "Nothing in this act shall require the General Assembly to appropriate funds to implement it or require a local school administrative unit to spend additional funds to implement it."

Session Laws 2005-276, s. 2.2(j), provides: "The Governor shall analyze the current State public school teacher salary schedule, trends in salaries, and the current disparity between North Carolina teacher pay and the national average to determine how teacher pay affects the State's ability to recruit and retain highly qualified public school teachers to improve educational opportunity and outcomes for children across North Carolina. The Governor may, after consultation with the Speaker of the House and the President Pro Tempore of the Senate, devise and execute prior to July 1, 2006, a plan to reduce the disparity and may use funds available from the Reserve for Contingent Appropriations to begin to execute such a plan."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-453, ss. 1 through 6, provide: "1. The State Board of Education shall establish a pilot program authorizing the implementation of alternative teacher salary plans. The purpose of the pilot program is to enable local school administrative units to develop and implement new and innovative teacher salary plans that will improve student performance by financially rewarding teachers through performance pay plans, recruiting teachers to the school unit, and recruiting teachers to hard-to-fill positions in specific subject areas. The State Board of Education may select up to five local school administrative units to participate in the pilot program.

"2. Local school administrative units applying to participate in the pilot program shall submit to the State Board of Education a business plan adopted by the local board of education. The business plan shall:

"(1) Explain in detail how additional flexibility regarding the use of salary funds will be used to accomplish specific improvements in student academic performance;

"(2) Describe the alternative methods to be used, the changes to existing practices proposed for the pilot, the incentives or alternative salary structure to be deployed, the expectations for teachers and other employees who participate in the pilot, the anticipated results, and the methods by which teachers and other employees will be evaluated;

"(3) Set out the laws, rules, and policies that must be waived to implement the business plan and the expected outcomes of waiving them;

"(4) Explain how the plan will be administered in a nondiscriminatory manner to assure fair and equitable treatment of all employees and employee groups participating in the pilot;

"(5) Include specific implementation, time line, management, performance, and reporting benchmarks;

"(6) Include statements of how teachers and other stakeholders were included in the development of the plan; and

"(7) Include a statement of how all teachers who will be directly participating in the plan conducted a verifiable secret ballot vote, a statement that the results of the vote were presented to the planning team and local board of education prior to the local board's consideration of the final plan, and a statement that the majority of teachers in the schools participating in the plan and the school administration team have agreed on the design of the plan.

"3. The State Board of Education may grant waivers of laws, rules, and policies to pilot units that are necessary to implement the business plans submitted by the pilot units.

"4. The Department of Public Instruction shall notify all school districts of the availability of the pilot projects and the time lines for submission of the business plans. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee as to the number of districts that have submitted business plans, the types of waivers being requested, and the status of the selection process.

"5. The Financial Services Section of the Department of Public Instruction shall monitor the implementation of the business plans by the pilot units and shall report its findings regularly to the State Board of Education and the Joint Legislative Education Oversight Committee.

"6. The Department of Public Instruction and the State Board of Education shall report to the Joint Legislative Education Oversight Committee by June 30, 2010, regarding the effectiveness and performance of all pilots implemented under this act. The report shall include any recommendations regarding the continuation, modification, or elimination of the pilot program."

Session Laws 2008-209, s. 1(b), provided that subsection 1(a) of that act, which amended subsection (d) of this section, would become effective July 1, 2009, if House Bill 2436, 2007 Regular Session, became law. House Bill 2436, 2007 Regular Session, was enacted as Session Laws 2008-107.

Session Laws 2008-209, s. 2, as amended by Session Laws 2008-187, s. 45.5, provided that the amendments by those acts would become effective if House Bill 2436, 2007 Regular Session [Session Laws 2008-107] became law, which it did. In addition, the amendment by Session Laws 2008-187, s. 45.5, was contingent upon House Bill 15, 2007 Regular Session [Session Laws 2008-209] becoming law.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-26, s. 8, provides: "Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 26.21(a), as amended by Session Laws 2008-209, s. 2, and as amended by Session Laws 2008-187, s. 45.5, effective July 1, 2008, and expiring June 30, 2009, rewrote the last sentence of the second paragraph of subsection (d).

Session Laws 2008-209, s. 1(a), effective July 1, 2009, added "except for teachers using personal leave on non-protected teacher workdays. Teachers using personal leave on non-protected teacher workdays shall receive full salary" to the end of the second paragraph of subsection (d).

Session Laws 2009-451, s. 7.35, effective July 1, 2009, added subsection (b1).

§ 115C-302.2: Repealed by Session Laws 2003-358, s. 1, effective January 1, 2004.

§ 115C-303. Withholding of salary.

(a) No teacher shall be placed on the payroll of a local school administrative unit unless he holds a certificate as required by law, and unless a copy of the teacher's contract has been filed with the superintendent. No teacher may be paid more than he is due under the local school salary schedule in force in the local school administrative unit. Substitute and interim teachers shall be paid under rules of the State Board of Education.

(b) The board of education may withhold the salary of any teacher who delays or refuses to render such reports as are required by law, but when the reports are delivered in accordance with law, the salary shall be paid forthwith.

(1955, c. 1372, art. 6, ss. 11, 13; 1975, c. 437, ss. 8, 9; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 19.)

§ 115C-304. Teacher tenure.

Tenure of teachers shall be determined in accordance with the provisions of G.S. 115C-325. (1981, c. 423, s. 1.)

§ 115C-305: Repealed by Session Laws 2001-260, s. 2, effective July 1, 2001.

Cross References. — As to appeal to Board of Education and superior court, see G.S. 115C-45(c).

§ 115C-306: Repealed by Session Laws 1983, c. 770, s. 16.

§ 115C-307. Duties of teachers.

(a) To Maintain Order and Discipline. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools. A teacher, student teacher, substitute teacher, voluntary teacher, or teacher assistant shall report to the principal acts of violence in school and students suspended or expelled from school as required to be reported in accordance with State Board policies.

(b) To Provide for General Well-Being of Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children.

(c) To Provide Some Medical Care to Students. — It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers or any other public school employee when given such authority by the board of education or its designee to provide medical care to students as provided in G.S. 115C-375.1.

(d) To Teach the Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music.

(e) To Enter into the Superintendent's Plans for Professional Growth. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, and teacher assistants when given authority over some part of the school program by the principal or supervising teacher, to enter actively into the plans of the superintendent for the professional growth of the teachers.

(f) To Discourage Nonattendance. — Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the school social worker in accordance with rules promulgated by the State Board of Education.

(g) To Make Required Reports. — A teacher shall make all reports required by the local board of education. The superintendent shall not approve the voucher for a teacher's pay until the required monthly and annual reports are made.

The superintendent may require a teacher to make reports to the principal.

A teacher shall be given access to the information in the student information management system to expedite the process of preparing reports or otherwise providing information. A teacher shall not be required by the local board, the superintendent, or the principal to (i) provide information that is already available on the student information management system; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; or (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Notwithstanding the forgoing, a local board may require information available on its student information management system or require the same information twice if the local board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

Any teacher who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(h) To Take Care of School Buildings. — It shall be the duty of every teacher to instruct children in proper care of property and to exercise due care in the protection of school property, in accordance with the provisions of G.S. 115C-523. (1955, c. 1372, art. 17, ss. 4, 6; 1959, cc. 1016, 1294; 1969, c. 638, ss. 2, 3; 1971, c. 434; 1981, c. 423, s. 1; 1985, c. 642; c. 686, s. 2; 1989, c. 585, s. 4; 1993, c. 539, s. 884; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 8.29(k); 2000-67, s. 8.18(a); 2005-22, s. 2(a).)

Legal Periodicals. — For note on constitutional restrictions on the infliction of corporal punishment, see 50 N.C.L. Rev. 911 (1972).

CASE NOTES

Editor's Note. — *Some of the cases below were decided under corresponding provisions of former Chapter 115.*

Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. Fowler v. Williamson, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Regulations prescribing a teacher's speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. Frison v. Franklin County Bd. of Educ., 596 F.2d 1192 (4th Cir. 1979).

Teachers who are entrusted with the care of small children and adolescents are intended by parents, citizenry and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

Applied in Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983); Crump v. Durham County Bd. of Educ., 74 N.C. App. 77, 327 S.E.2d 599 (1985).

§ 115C-308. Rules for teacher's conduct.

The conduct of teachers, the kind of reports they shall make, and their duties in the care of school property are subject to the rules and regulations of the local board, as provided in G.S. 115C-47(18). (1981, c. 423, s. 1.)

§ 115C-309. Student teachers.

(a) Student Teacher and Student Teaching Defined. — A "student teacher" is any student enrolled in an institution of higher education approved by the State Board of Education for the preparation of teachers who is jointly assigned by that institution and a local board of education to student-teach under the direction and supervision of a regularly employed certified teacher. "Student teaching" may include those duties granted to a teacher by G.S. 115C-307 and 115C-390 and any other part of the school program for which either the supervising teacher or the principal is responsible.

(b) Legal Protection. — A student teacher under the supervision of a certified teacher or principal shall have the protection of the laws accorded the certified teacher.

(c) Assignment of Duties. — It shall be the responsibility of a supervising teacher, in cooperation with the principal and the representative of the teacher-preparation institution, to assign to the student teacher responsibilities and duties that will provide adequate preparation for teaching. (1969, c. 638, s. 1; 1981, c. 423, s. 1.)

§ 115C-310. Teacher assistants engaged in student teaching.

The State Board of Education shall adopt a program to facilitate the process by which teacher assistants may become teachers.

Teacher assistants who participate in this program:

(1) Shall be enrolled in an approved teacher education program in a North Carolina institution of higher education; and

(2) Shall be employed in a North Carolina public school.

Local school administrative units are encouraged to assign teacher assistants to a different classroom during student teaching than the classroom they are assigned to as a teacher assistant. To the extent possible, they may be assigned to another school within the same local school administrative unit.

At the discretion of the local school administrative unit, teacher assistants may continue to receive their salary and benefits while student teaching in the same local school administrative unit where they are employed as a teacher assistant.

The State Board of Education shall consult with the Board of Governors of The University of North Carolina and the North Carolina Independent Colleges and Universities in the development of the program. Each approved teacher education program and each local school administrative unit shall administer this program beginning with the 2005-2006 academic year. (2005-302, s. 1.)

§§ 115C-311 through 115C-314: Reserved for future codification purposes.

ARTICLE 21.

Other Employees.

§ 115C-315. Hiring of school personnel.

(a) Janitors and Maids. — In the city administrative units, janitors and maids shall be appointed by the board of education of such local school administrative unit upon the recommendation of the superintendent.

(b) Election by Local Boards. — School personnel shall be elected by the local board of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

It is the policy of the State of North Carolina to encourage and provide for the most efficient and cost-effective method of meeting the needs of local school administrative units for noncertified support personnel. To this end, the State Board of Education shall recommend to the General Assembly by November 1, 1984, a system using factors and formulas to determine the total number of noncertified support personnel allotted to local school administrative units. The recommended system for allotting noncertified support personnel shall include the proposed State's funding obligation for these positions and shall be developed in consultation with school-based support personnel or their representatives.

(c) Prerequisites for Employment. — All professional personnel employed in the public schools of the State or in schools receiving public funds shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.

(d) Certification for Professional Positions. — The State Board of Education shall have entire control of certifying all applicants for professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his or her academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(d1) Certification for School Nurses. — Notwithstanding any other provision of law or rule, school nurses employed in the public schools prior to July 1, 1998, shall not be required to be nationally certified to continue employment. School nurses not certified by the American Nurses' Association or the National Association of School Nurses shall continue to be paid based on the noncertified nurse salary range as established by the State Board of Education.

(e) Repealed by Session Laws 1989, c. 385, s. 3.

(f) Employing Persons Not Holding Nor Qualified to Hold Certificate. — It shall be unlawful for any board of education to employ or keep in service any professional person who neither holds nor is qualified to hold a certificate in compliance with the provisions of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372, art. 5, s. 4; art. 18, ss. 1-4; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; 1981,

c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 9; 1985 (Reg. Sess., 1986), c. 975, s. 16; 1989, c. 385, s. 3; 2002-126, s. 7.41(a).)

CASE NOTES

Speech Pathologists. — State Board of Education does not have the power to credential speech pathologists pursuant to their regulatory authority over the qualifications of school employees; the Licensure Act for Speech and Language Pathologists and Audiologists (G.S. 90-292) alone governs the qualification of persons practicing speech pathology, no matter what the setting. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996), aff'd, 345 N.C. 493, 480 S.E.2d 50 (1997).

OPINIONS OF ATTORNEY GENERAL

Salary and Hours of Certified Employee. — N.C. Const., Art. IX, § 5 and G.S. 115C-12(9), 115C-272(a), 115C-284(c), and 115C-296 and subsection (d) of this section give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

§ 115C-316. Salary and vacation.

(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. — Each local board of education shall establish a set date on which monthly salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis, shall be made. This set pay date may differ from the end of the calendar month of service. Employees may be prepaid on the monthly pay date for days not yet worked. An employee who fails to attend scheduled workdays or who has not worked the number of days for which the employee has been paid and who resigns or is dismissed shall repay to the local board any salary payments received for days not yet worked. An employee who has been prepaid and who continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal or other appropriate discipline. The daily rate of pay shall equal the number of weekdays in the pay period. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of the employee's annual vacation days or to make up the day at a time agreed upon by the employee and the employee's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, an employee shall work on the scheduled makeup day. Included within their term of employment each local board of education shall designate the same or an equivalent number

of legal holidays as those designated by the State Personnel Commission for State employees.

(2) School Employees Paid on an Hourly or Other Basis. — Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302.1(b) and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that school employees employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments: Provided further, that any individual school employee employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Employees may be prepaid on the set pay date for days not yet worked. An employee who fails to attend scheduled workdays or who has not worked the number of days for which the employee has been paid and who resigns or is dismissed shall repay to the local board any salary payments received for days not yet worked. An employee who has been prepaid and who continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal or other appropriate discipline. The daily rate of pay shall equal the number of weekdays in the pay period. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, the employee shall work on the scheduled makeup day. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten-or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July

1 of the same year. All vacation leave taken by these employees shall be upon the authorization of their immediate supervisor and under policies established by the local board of education. Vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours or 30 days when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. Upon separation from service due to service retirement, any annual vacation leave over 30 days will convert to sick leave and may be used for creditable service at retirement in accordance with G.S. 135-4(e). If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4a) Employees employed on a 10- or 11-month basis at year-round schools shall be employed for the same total number of days as employees employed for a period of 10 or 11 calendar months, respectively, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity, for employees who are employed on a 10- or 11-month basis at year-round schools, shall be equivalent to those of employees employed for 10 or 11 calendar months, respectively.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(b) Every local board of education may adopt, as to school officials other than superintendents, principals and supervisors not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) Longevity pay for 10-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period.

(d) Expired pursuant to Session Laws 1998-212, s. 28.24, effective October 1, 2007. (1955, c. 1372, art. 5, s. 32; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, ss. 2, 3; c. 730, s. 1; c. 946, s. 3; c. 947, s. 2; 1983, c. 872, ss. 5-7; 1985, c. 757, s. 145(g), (h); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, ss. 8, 9; 1989, c. 386, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 94; 1991, c. 689, s. 39.3(b); 1993, c. 98, s. 2; c. 321, s. 73(d), (e); c. 475, s. 2; 1995, c. 450, s. 21; 1997-443, s. 8.38(h), (i); 1998-212, s. 28.24(b); 1999-237, s. 28.26(e), (f); 2002-126, s. 28.10(a); 2004-124, s. 31.18A(a); 2005-144, s. 7A.1; 2007-145, s. 7(a); 2007-326, s. 3(a).)

Local Modification. — Henderson: 1991 (Reg. Sess., 1992), c. 995 (eff. July 1, 1993); New Hanover: 1993, c. 561, s. 53; Orange: 1991, c. 246, s. 8; Alleghany County Board of Education: 1995, c. 90, s. 1; Brunswick County Board of Education: 1993, c. 321, s. 144; Caldwell County Board of Education: 1993 (Reg. Sess., 1994), c. 796, s. 19.22; 1995, c. 12, s. 1; Charlotte-Mecklenburg County School Administrative Unit: 1991 (Reg. Sess., 1992), c. 770; Cherokee County School Administrative Unit: 1995, c. 120, s. 1; Dare County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.18; Haywood County Board of Education: 1989, c. 399, s. 1; 1989 (Reg. Sess., 1990), c. 820; Kings Mountain School Administrative Unit: 1991, c. 106, s. 2; Pitt Board of Education: 1991 (Reg. Sess., 1992), c. 835; Scotland Board of Education: 1993, c. 321, s. 143.1; 1993 (Reg. Sess., 1994), c. 769, s. 19.19.

Paid Vacation for School Bus Drivers. — Session Laws 1997-443, s. 8.6 provides: "Notwithstanding any other provision of law, all regular school bus drivers, who have been employed for at least one academic year and who are not entitled to more than one day of paid vacation leave, are entitled to one day of paid vacation leave in each subsequent school year. An employee who is terminated or resigns before taking the leave day is not entitled to compensation for the day." Session Laws 1996, Second Extra Session, c. 18, s. 18.6, contained similar provisions and was applicable to all school bus drivers.

Pilot Program Granting Additional Flexibility in Setting Pay Dates for 10-Month Employees. — Session Laws 1996, Second Extra Session, c. 18, s. 18.8, as continued by Session Laws 1997-443, s. 8.9, provides that the State Board of Education may establish and continue a pilot program to grant no more than four local boards of education additional flexibility in setting the pay dates for their 10-month employees. Notwithstanding the provisions of G.S. 115C-302.1(b) and 115C-316(a), local school administrative units participating in the pilot may pay 10-month employees for a full month of employment when days employed are less than a full month at the beginning or the end of the teachers' contract. No local school administrative unit shall be required to participate in the pilot. A local board participating in the pilot shall bear all of the cost of recouping funds prepaid for work never done and the cost of these funds cannot be recouped.

Further, the State Board of Education shall report to the Joint Legislative Education Oversight Committee on the pilot program prior to September 15, 1998.

Annual Leave Bonuses. — Session Laws 2002-126, s. 28.3A, as amended by Session Laws 2002-159, s. 82, provides: "Any person who is a full-time permanent employee on September 30, 2002, of (i) a local board of education, or (ii) the State, who is eligible for annual leave shall have a one-time additional 10 days of annual leave credited on that date. Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of this act are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. Employees paid under Section 7.45 of this act shall not be eligible for this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that maybe carried forward. Part-time permanent employees and 9- or 10-month employees shall receive a pro rata amount of the 10 days.

"The General Assembly encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees. Included within this may be salary increases within available funds to employees not receiving special annual leave bonuses."

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1997-443, s. 8.38(o), provides, in part, that the rate of pay provisions in subsections (h) and (i) of s. 8.38, which amended this section, shall become effective July 1, 1998, and that all other subsections and provisions of s. 8.38 become effective July 1, 1997.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2002-126, s. 28.10(a), as amended by Session Laws 2004-124, s. 31.18A(a), as amended by Session Laws 2005-144, s. 7A.1, as amended by 2007-145, s. 7(a), as amended by 2007-326, s. 3(a), amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subsection (d), as added by the 1998 act, from August 1, 2007 to October 1, 2007.

Session Laws 2004-124, s. 31.18A.(e)-(g), as amended by Session Laws 2004-161, s. 53.2, provides: "(e) The Retirement Systems Division shall conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. The Retirement Systems Division shall develop findings and recommendations for the adoption of an efficient and fiscally sound policy on postretirement reemployment and shall report those findings and recommendations, as well as the analysis that produced them, to the General Assembly by February 1, 2005.

"(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling maybe obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment.

"(g) Notwithstanding any other provision of law, effective July 1, 2004, each local school administrative unit or charter school participating in the Teachers' and State Employees' Retirement System shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit or charter school shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, effective July 1, 2004, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 29.28(c), provides: "Notwithstanding any other provision of law, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position, shall be paid from local funds."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-326, s. 4, effective October 1, 2007, and expiring October 1, 2009, provides: "Notwithstanding any other provision of law, effective July 1, 2007, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this section.

"Notwithstanding any other provision of law, effective July 1, 2007, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2009-26, s. 8, provides: "Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget."

CASE NOTES

This section is specific in its authorization to county boards of education to designate the required number of legal holidays. It thus controls over the general language of G.S. 103-4. Fleming v. Vance County Bd. of Educ., 60 N.C. App. 263, 298 S.E.2d 733 (1983).

§ 115C-317. Penalty for making false reports or records.

Any school employee of the public schools other than a superintendent, principal, or teacher, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction. (1955, c. 1372, art. 17, s. 6; 1959, c. 1294; 1981, c. 423, s. 1; 1993, c. 539, s. 885; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 115C-317.1. School social workers and transporting students.

A school social worker shall not be required to transport students without the existence of a written job description or local board policy that imposes this requirement. (2005-355, s. 1.)

§ 115C-318. Liability insurance for nonteaching public school personnel.

The State Board of Education shall provide funds for liability insurance for nonteaching public school personnel to the extent that such personnel's salaries are funded by the State. The insurance shall cover claims made for injury liability and property damage liability on account of an act done or an omission made in the course of the employee's duties. As provided by law or the rules and policies of the State Board of Education or the local school administrative unit, the State Board of Education shall comply with the State's laws in securing the insurance and shall provide it at the earliest possible date for the 1982-83 school year. Nothing in this section shall prevent the State Board from furnishing the same liability insurance protection for nonteaching public school personnel not supported by State funds, provided that the cost of the protection shall be funded from the same source that supports the salaries of these employees. (1981 (Reg. Sess., 1982), c. 1399, s. 3; 1993, c. 522, s. 4; 1995, c. 450, s. 22.)

Article 21A.

Privacy of Employee Personnel Records.

§ 115C-319. Personnel files not subject to inspection.

Personnel files of employees of local boards of education, former employees of local boards of education, or applicants for employment with local boards of education shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the local board of education which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

Nothing in this section shall be construed to prevent local boards of education from disclosing the certification status and other information about employees as required by Section 1111(h)(6) of P.L. 107-110. (1987, c. 571, s. 1; 2002-126, s. 7.36.)

OPINIONS OF ATTORNEY GENERAL

The licensure status of an LEA employee is part of that employee's confidential personnel file, so an LEA is prohibited from routinely releasing it. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

§ 115C-320. Certain records open to inspection.

Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1987, c. 571, s. 1; 2002-171, s. 4; 2007-508, s. 1.)

Editor's Note. — Session Laws 2002-171, s. 9, provides: "No General Fund appropriations shall be used to implement this act. The Attorney General and all other agencies to which this act applies shall implement the provisions of this act with funds that are or will become available as a result of the settlement of the case entitled State of Florida, et al. v. Nine West Group, Inc., and John Does 1-500, Civil Action No. 00 CIV 1707 (BDP), U.S.D.C., Southern District of New York, or other grants or funds that are not appropriated from the General Fund."

OPINIONS OF ATTORNEY GENERAL

The licensure status of an LEA employee is part of that employee's confidential personnel file, so an LEA is prohibited from routinely releasing it. See opinion of Attorney General to Lowell Harris, Director Exceptional Children Division N. C. Department of Public Instruction, 1998 N.C.A.G. 47 (11/20/98).

§ 115C-321. Confidential information in personnel files; access to information.

(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment.

(2) The superintendent and other supervisory personnel.

(3) Members of the local board of education and the board's attorney.

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is relevant to possible criminal misconduct may be made available to law enforcement and the district attorney to assist in the investigation of:

(1) A report made to law enforcement pursuant to G.S. 115C-288(g), or

(2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given five working days prior written notice of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee and produced under subsection (a1) of this section shall not be admissible in any subsequent criminal proceeding against the employee.

(b) Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(b1) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former public school employees to domiciled, nonprofit organizations representing 10,000 or more retired State government, local government, or public school employees.

(c) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of five hundred dollars ($500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five hundred dollars ($500.00). (1987, c. 571, s. 1; 2005-321, s. 1; 2007-192, s. 1; 2008-194, s. 11(b).)

Effect of Amendments. — Session Laws 2008-194, s. 11(b), effective August 8, 2008, added subsection (b1).

§ 115C-322: Reserved for future codification purposes.

ARTICLE 22.

General Regulations.

Part 1. Health Certificate.

§ 115C-323. Employee health certificate.

(a) Any person initially employed in a public school or reemployed in a public school after an absence of more than one school year shall provide to the superintendent a certificate certifying that the person does not have any physical or mental disease, including tuberculosis in the communicable form or other communicable disease, that would impair the person's ability to perform his or her duties effectively. A local board or a superintendent may require any school employee to take a physical examination when considered necessary.

Any public school employee who has been absent for more than 40 successive school days because of a communicable disease shall, before returning to work, provide to the superintendent a certificate certifying that the individual is free from any communicable disease.

(b) One of the following individuals shall prepare any certificate required under this section:

(1) A physician licensed to practice in North Carolina.
(2) A nurse practitioner approved under G.S. 90-18(14).
(3) A physician's assistant licensed to practice in North Carolina.

(c) Notwithstanding subsection (b) of this section, in the case of a person initially employed in a public school, any of the following who holds a current unrestricted license or registration in another state may prepare the certificate so long as evidence of that license or registration is on the certificate:

(1) A physician.
(2) A nurse practitioner.
(3) A physician's assistant.

(d) The certificate shall be prepared on a form supplied by the Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been conducted, at the time of the certification, in accordance with rules adopted by the Superintendent of Public Instruction, with approval of the Secretary of Health and Human Services. These rules may require an X-ray chest examination for all new employees of the public school system.

(e) It shall be the duty of the superintendent of the school in which the person is employed to enforce the provisions of this section. Any person violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14; 1973, c. 476, s. 128; 1975, c. 72; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 20; 1991, c. 342, s. 4; 1993, c. 539, s. 886; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.50; 2001-118, s. 1.)

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Sufficiency of Health Card. — A health card furnished by the public health department was sufficient as a proper certification for food service employees and janitors if it contained the certification required by former G.S. 115-143, which was similar to this section. A true copy of such health card furnished by the public health department was sufficient if furnished to the superintendent of schools. This requirement applied also to substitute teachers. See opinion of the Attorney General to Mr. Harry C. Corbin, Superintendent, Transylvania County Schools, 40 N.C.A.G. 273 (1969), rendered under former Chapter 115.

Part 2. Payment of Wages After Death of Employee.

§ 115C-324. Disposition of payment due employees at time of death.

In the event of the death of any superintendent, teacher, principal, or other school employee to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G.S.

28A-25-6. (1955, c. 1372, art. 18, s. 8; 1965, c. 395; 1981, c. 423, s. 1; 2009-570, s. 38.)

Effect of Amendments. — Session Laws 2009-570, s. 38, effective August 28, 2009, substituted "G.S. 28A-25-6" for "G.S. 28-68" at the end of the section.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) Repealed by Session Laws 1997-221, s. 13(a).

(1a) "Career employee" as used in this section means:

a. An employee who has obtained career status with that local board as a teacher as provided in G.S. 115C-325(c);

b. An employee who has obtained career status with that local board in an administrative position as provided in G.S. 115C-325(d)(2);

c. A probationary teacher during the term of the contract as provided in G.S. 115C-325(m); and

d. A school administrator during the term of a school administrator contract as provided in G.S. 115C-287.1(c).

(1b) "Career school administrator" means a school administrator who has obtained career status in an administrative position as provided in G.S. 115C-325(d)(2).

(1c) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(1d) "Case manager" means a person selected under G.S. 115C-325(h)(7).

(2) Repealed by Session Laws 1997, c. 221, s. 13(a).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(4a) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325(f)(2).

(4b) "Exchange teacher" means a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

(5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(5a) **(Effective until October 1, 2009)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who retired on or before October 1, 2007, and who has been retired at least six months, has not been employed in any capacity for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers.

"Retired teacher" also means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who retired after October 1, 2007, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; who has been retired at least six months, has not been employed in any capacity for at least six months immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers.

(5b) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position.

(7) **(See note)** Redesignated as (a)(5a).

(8) "Year" for purposes of computing time as a probationary teacher shall be not less than 120 workdays performed as a probationary teacher in a full-time permanent position in a school year. Workdays performed pending the outcome of a criminal history check as provided in G.S. 115C-332 are included in computing time as a probationary teacher.

(b) Personnel Files. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

(c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The teacher has a right to notice and hearing prior to the board's vote as provided in G.S. 115C-325(m)(3) and G.S. 115C-325(m)(4). The board shall give the teacher written notice of that decision by June 15 or such later date as provided in G.S. 115C-325(m)(7). If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status, the teacher shall be entitled to an additional month's pay for every 30 days or portion thereof after June 16 or such later date as provided in G.S. 115C-325(m)(7) if a majority of the board belatedly votes against granting career status.

(2) Employment of a Career Teacher. — A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than one year. The board may grant career status immediately upon employing the teacher, or after the first year of employment. The teacher has a right to notice and hearing prior to the board's vote as provided in G.S. 115C-325(m)(3) and G.S. 115C-325(m)(4). The board shall give the teacher written notice of that decision by June 15 or such later date as provided in G.S. 115C-325(m)(7). If a majority of the board votes against granting career status, the teacher shall not teach beyond the current term. If after one year of employment, the board fails to vote on the issue of granting career status, the teacher shall be entitled to one additional month's pay for every 30 days or portion thereof beyond June 16 or such later date as provided in G.S. 115C-325(m)(7) if a majority of the board belatedly voted against granting career status.

(2a) Notice of Teachers Eligible to Achieve Career Status. — At least 30 days prior to any board action granting career status, the superintendent shall submit to the board a list of the names of all teachers who are eligible to achieve career status. Notwithstanding any other provision of law, the list shall be a public record under Chapter 132 of the General Statutes.

(3) Ineligible for Career Status. — No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible

to obtain career status or continue in a career status as a teacher if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is employed as a school administrator who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.

(4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(5) Consecutive Years of Service. — If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher.

(6) Status of Exchange Teachers. — Exchange teachers shall not be eligible to obtain career status. However, for purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week.

(d) Career Teachers and Career School Administrators.

(1) A career teacher or career school administrator shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

(2)a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. Repealed by Session Laws 1997, c. 221, s. 13(a).

c. Subject to G.S. 115C-287.1, when a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career Employee.

(1) Grounds. — No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

a. Inadequate performance.
b. Immorality.
c. Insubordination.
d. Neglect of duty.
e. Physical or mental incapacity.
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude.
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
i. Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
j. Failure to comply with such reasonable requirements as the board may prescribe.
k. Any cause which constitutes grounds for the revocation of the career teacher's teaching certificate or the career school administrator's administrator certificate.
l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
m. Failure to maintain his certificate in a current status.
n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Reduction in Force. — Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board

within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available career employees to be maintained by the board. Career employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) Inadequate Performance. — In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

(4) Three-Year Limitation on Basis of Dismissal or Demotion. — Dismissal or demotion under subdivision (1) above, except paragraphs g. and o. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal or demotion is mailed to the career employee. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a career employee's sexual misconduct toward or sexual harassment of students or staff.

(f)(1) Suspension without Pay. — If a superintendent believes that cause exists for dismissing a career employee for any reason specified in G.S. 115C-325(e)(1) and that immediate suspension of the career employee is necessary, the superintendent may suspend the career employee without pay. Before suspending a career employee without pay, the superintendent shall meet with the career employee and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the career employee shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the career employee's personnel file.

(2) Disciplinary Suspension Without Pay. — A career employee recommended for suspension without pay pursuant to G.S. 115C-325(a)(4a) may request a hearing before the board. If no request is made within

15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. — The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:
  1. The recommended disciplinary suspension without pay is for more than 10 days; or
  2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's certificate, or providing false information.

b. Board hearing for disciplinary suspensions of no more that 10 days. — The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325(f)(2)a.2.

(f1) Suspension with Pay. — If a superintendent believes that cause may exist for dismissing or demoting a career employee for any reasons specified in G.S. 115C-325(e)(1), but that additional investigation of the facts is necessary and circumstances are such that the career employee should be removed immediately from his duties, the superintendent may suspend the career employee with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of his action and shall notify the career employee within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the career employee within the 90-day period, the career employee shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the career employee's personnel file at his request. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

(f2) Procedure for Demotion of Career School Administrator. — If a superintendent intends to recommend the demotion of a career school administrator, the superintendent shall give written notice to the career school administrator by certified mail or personal delivery and shall include in the notice the grounds upon which the superintendent believes the demotion is justified. The notice shall include a statement that if the career school administrator requests a hearing within 15 days after receipt of the notice, the administrator shall be entitled to have the grounds for the proposed demotion reviewed by the local board of education. If the career school administrator does not request a board hearing within 15 days, the superintendent may file the recommendation of demotion with the board. If, after considering the superintendent's recommendation and the evidence presented at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board may by resolution order the demotion. The procedures for a board hearing under G.S. 115C-325(j3) shall apply to all demotions of career school administrators.

(g) Repealed by Session Laws 1997, c. 221, s. 13(a).

(h) Procedure for Dismissal or Demotion of Career Employee.

(1) a. A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

b. G.S. 115C-325(f2) shall apply to the demotion of a career school administrator.

(2) Before recommending to a board the dismissal or demotion of the career employee, the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and give him written notice of the charges against him, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the career employee within 14 days after the date of receipt of the notice requests a review, he shall be entitled to have the grounds for the proposed recommendations of the superintendent reviewed by a case manager. A copy of G.S. 115C-325 and a current list of case managers shall also be sent to the career employee. If the career employee does not request a hearing with a case manager within the 14 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 14-day period after receipt of the notice, the career employee may file with the superintendent a written request for either (i) a hearing on the grounds for the superintendent's proposed recommendation by a case manager or (ii) a hearing within 10 days before the board on the superintendent's recommendation. If the career employee requests an immediate hearing before the board, he forfeits his right to a hearing by a case manager. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the employee without pay. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of the case manager is filed with the superintendent.

(4) Repealed by Session Laws 1997, c. 221, s. 13(a).

(5) If the career employee elects to request a hearing by a case manager, the career employee and superintendent shall each have the right to eliminate up to one-third of the names on the approved list of case managers. The career employee shall specify those case managers who are not acceptable in the career employee's request for a review of the superintendent's proposed recommendation under G.S. 115C-325(h)(3). The superintendent and career employee may jointly select a person to serve as case manager. The person need not be on the master list of case managers maintained by the Superintendent of Public Instruction.

(6) If a career employee requests a review by a case manager, the superintendent shall notify the Superintendent of Public Instruction within two days' receipt of the request. The notice shall contain a list of the case managers the career employee and the superintendent have eliminated from the master list or the name of a person, if any,

jointly selected. Failure to exercise the right to eliminate names from the master list shall constitute a waiver of that right.

(7) The Superintendent of Public Instruction shall select a case manager within three days of receiving notice from the superintendent. The Superintendent of Public Instruction shall designate the person jointly selected by the parties to serve as case manager provided the person agrees to serve as case manager and can meet the requirements for time frames for the hearing and report as provided in G.S. 115C-325(i1)(1). If a case manager was not jointly selected or if the case manager is not available, the Superintendent of Public Instruction shall select a case manager from the master list. No person eliminated by the career employee or superintendent shall be designated case manager.

(8) The superintendent and career employee shall provide each other with copies of all documents submitted to the Superintendent of Public Instruction or to the designated case manager.

(h1) Case Managers; Qualifications; Training; Compensation.

(1) Each year the State Board of Education shall select and maintain a master list of no more than 42 qualified case managers.

(2) Persons selected by the State Board as case managers shall be: (i) certified as a North Carolina Superior Court mediator; (ii) a member of the American Arbitration Association's roster of arbitrators and mediators; or (iii) have comparable certification in alternative dispute resolution. Case managers must complete a special training course approved by the State Board of Education.

(3) The State Board of Education shall determine the compensation for a case manager. The State Board shall pay the case manager's compensation and reimbursement for expenses.

(i) Repealed by Session Laws 1997, c. 221, s. 13(a).

(i1) Report of Case Manager; Superintendent's Recommendation.

(1) The case manager shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 10 days from the time of the designation. The case manager may extend the period of time by up to five additional days if the case manager informs the superintendent and the career employee that justice requires that a greater time be spent in connection with the investigation and the preparation of the report. Furthermore, the superintendent and the career employee may agree to an extension of more than five days.

(2) The case manager shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The case manager also shall make a recommendation as to whether the findings of fact substantiate the superintendent's grounds for dismissal. The case manager shall deliver copies of the report to the superintendent and the career employee.

(3) Within two days after receiving the case manager's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.

(4) If the superintendent contends that the case manager's report fails to address a critical factual issue, the superintendent shall within three days receipt of the case manager's report, request in writing with a copy to the career employee that the case manager prepare a supple-

ment to the report. The superintendent shall specify what critical factual issue the superintendent contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing by a Case Manager. — The following provisions shall apply to a hearing conducted by the case manager.

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules and regulations adopted by the State Board of Education to govern case manager hearings.

(3) At the hearing the career employee and the superintendent or the superintendent's designee shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(4) Rules of evidence shall not apply to a hearing conducted by a case manager and the case manager may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least five days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the superintendent intends to present. At least three days before the hearing, the career employee shall provide to the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the career employee intends to present. Additional witnesses or documentary evidence may not be presented except upon a finding by the case manager that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.

(6) The case manager may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.

(7) The case manager shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the case manager.

(j1) Board Determination.

(1) Within two days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within two days after receiving the

career employee's request for a board hearing, the superintendent shall request that a transcript of the case manager hearing be made. Within two days of receiving a copy of the transcript, the superintendent shall submit to the board the written recommendation and shall provide a copy of the recommendation to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the case manager's report and a copy of the transcript of the case manager hearing.

(2) If the career employee contends that the case manager's report fails to address a critical factual issue the career employee shall, at the same time he notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the case manager prepare a supplement to the case manager's report. The career employee shall specify the critical factual issue he contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(3) Within two days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than seven nor more than 10 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

(4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).

(5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. — The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) If the career employee requested a hearing by a case manager, the board shall receive the following:

a. The whole record from the hearing held by the case manager, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.

b. The case manager's findings of fact, including any supplemental findings prepared by the case manager under G.S. 115C-325 (i1)(4) or G.S. 115C-325(j1)(2).

c. The case manager's recommendation as to whether the grounds in G.S. 115C-325(e) submitted by the superintendent are substantiated.

d. The superintendent's recommendation and the grounds for the recommendation.

(3) If the career employee did not request a hearing by a case manager, the board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the career employee seven days before the hearing.

b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(4) The superintendent and career employee may submit a written statement not less than three days before the hearing.

(5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.

(6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the case manager.

(7) The board shall accept the case manager's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the case manager did not address a critical factual issue, the board may remand the findings of fact to the case manager to complete the report to the board. If the case manager does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the case manager. The board's determination shall be based upon a preponderance of the evidence.

(8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions, Demotions of Career School Administrators, and for Reductions in Force. — The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2), G.S. 115C-325(f2), and G.S. 115C-325(f)(2)a:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a., a demotion of a career school administrator under G.S. 115C-325(f2), or whether the grounds for a dismissal or demotion due to a reduction in force is justified.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind

commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.

(k), (*l*) Repealed by Session Laws 1997, c. 221, s. 13(a).

(m) Probationary Teacher.

(1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career employee may be dismissed as set forth in subsections (e), (f), (f1), and (h) to (j3) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(3) The superintendent shall provide written notice to a probationary teacher no later than May 15 of the superintendent's intent to recommend nonrenewal and the teacher's right, within 10 days of receipt of the superintendent's recommendation, to (i) request and receive written notice of the reasons for the superintendent's recommendation for nonrenewal and the information that the superintendent may share with the board to support the recommendation for nonrenewal; and (ii) request a hearing for those teachers eligible for a hearing under G.S. 115C-325(m)(4). The failure to file a timely request within the 10 days shall result in a waiver of the right to this information and any right to a hearing. If a teacher files a timely request, the superintendent shall provide the requested information and arrange for a hearing, if allowed, and the teacher shall be permitted to submit supplemental information to the superintendent and board prior to the board making a decision or holding a hearing as provided in this section. The board shall adopt a policy to provide for the orderly exchange of information prior to the board's decision on the superintendent's recommendation for nonrenewal.

(4) **(Applicable to proceedings initiated after August 31, 2010)** If the probationary teacher is eligible for career status pursuant to G.S.

115C-325(c)(1) and (c)(2) and the superintendent recommends not to give the probationary teacher career status, the probationary teacher has the right to a hearing before the board unless the reason is a justifiable board- or superintendent-approved decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding.

(5) For probationary contracts that are not in the final year before the probationary teacher is eligible for career status, the probationary teacher shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the probationary teacher making the petition of its decision whether to grant a hearing.

(6) Any hearing held according to this subsection shall be pursuant to the provisions of G.S. 115C-45(c).

(7) The board shall notify a probationary teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for information or a hearing, the board shall provide the nonrenewal notification by July 1 or such later date upon the written consent of the superintendent and teacher.

(n) Appeal. — Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A career employee who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation. — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

(p) Section Applicable to Certain Institutions. — Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students.

(p1) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools. —

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of teachers, principals, assistant principals, directors, supervisors, and other certificated personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a teacher, principal, assistant principal,

director, supervisor, or other certificated personnel when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The Secretary may dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when:

a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and

b. That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other certificated personnel for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a teacher, principal, assistant principal, director, supervisor, or other certificated personnel may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of certificated staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

Within 30 days of any dismissal under this subdivision, a certificated staff member may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to certificated staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The Secretary of Health and Human Services or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.

(q) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, this subdivision governs the State Board's dismissal of principals

assigned to low-performing schools to which the Board has assigned an assistance team:

a. The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

b. If the State Board through its designee recommends the dismissal of a principal under this subdivision, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

c. The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

d. The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

e. If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

f. In all hearings under this subdivision, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under sub-subdivision d. of this subdivision, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a career employee under G.S. 115C-325(e)(1).

g. In all hearings under this subdivision, two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

h. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of

this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of certified staff members who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

A certified staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to certified staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a local board from refusing to renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.37.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8; 1997-221, ss. 11(a),

13(a); 1997-443, s. 11A.118(a); 1998-5, s. 2; 1998-59, s. 3; 1998-131, s. 6; 1998-202, s. 4(o); 1998-212, s. 28.24(c); 1998-217, s. 67.1(a); 1999-96, ss. 1-5; 1999-456, s. 34; 2000-67, s. 8.24(b); 2000-137, s. 4(r); 2000-140, ss. 23, 24; 2001-376, s. 2; 2001-424, ss. 28.11(g), 32.25(b); 2001-487, s. 74(c); 2002-110, ss. 2, 3; 2002-126, ss. 7.38, 28.10(a), (c), (d); 2003-302, s. 1; 2004-81, s. 2; 2004-124, s. 31.18A(a), (c), (d); 2004-199, s. 57(b); 2005-144, ss. 7A.1, 7A.3, 7A.4; 2005-276, ss. 29.28(b), 29.28(d); 2007-145, s. 7(a), (c)-(e); 2007-326, ss. 2, 3(a), (c)-(e); 2007-484, s. 43.7E; 2009-326, s. 1.)

Cross References. — As to duties of superintendent concerning staff, see G.S. 115C-276. As to the compensation of principals in specific schools, see G.S. 115C-285.

Editor's Note. — Subdivision (a)(5b) was originally assigned the designation of subdivision (a)(5a) by the Revisor of Statutes, the number in Session Laws 1997-221, s. 13(a), having been subdivision (a)(7). Session Laws 1998-212, G.S. 28.24(c), added the present subdivision (a)(5a), and redesignated former subdivision (a)(5a) as subdivision (a)(5b).

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 1998-131, s. 19, made the amendment by s. 6 thereof, which added subsection (p1), effective July 1, 1998, only if funds were appropriated for the 1998-99 fiscal year. The necessary appropriations were made.

Session Laws 1998-212, s. 1.1, provides that this act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.5, contains a severability clause.

Session Laws 2001-424, s. 29.2(b), provides: "In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4), if:

"(1) A teacher who receives a bonus pursuant to this section is reassigned to a school at which there is no such bonus;

"(2) A teacher who receives a bonus pursuant to this section is reassigned to teach in a field for which there is no such bonus; or

"(3) A teacher receives a bonus pursuant to this section and the bonus is subsequently discontinued or reduced."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 28.10(a), as amended by Session Laws 2004-124, s. 31-18A(a), as amended by Session Laws 2005-144, s. 7A.1, as amended by 2007-145, s. 7(a), as amended by 2007-346, s. 3(a), amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subdivision (a)(5a), as added by the 1998 act, from June 30, 2005, to October 1, 2007.

Session Laws 2002-126, s. 28.10(d), as amended by Session Laws 2004-124, s. 31.18A(d), as amended by Session Laws 2005-144, s. 7A.4, as amended by Session Laws 2007-145, s. 7(d), and as amended by Session Laws 2007-326, s. 3(d), amended Session Laws 2001-424, s. 32.25(c), to change the expiration date affecting subdivision (a)(5a), as amended by the 2001 act, from June 30, 2007 to October 1, 2007.

Session Laws 2002-126, s. 28.10(c), as amended by Session Laws 2004-124, s. 31.18A(c), as amended by Session Laws 2005-144, s. 7A.3, as amended by Session Laws 2007-145, s. 7(c), and as amended by Session Laws 2007-326, s. 3(c), amended Session Laws 1998-217, s. 67.1 to change the expiration date affecting subdivision (a)(5a), as amended by the 1998 act, from June 30, 2007 to October 1, 2007.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 7.20(a), provided for certain appropriated funds to be used to provide annual bonuses to teachers certified in and teaching in the fields of mathematics, science, or special education in grades 6 through 12 at middle and high schools with eighty percent (80%) or more of the students eligible for free or reduced lunch or with fifty percent (50%) or more of students performing below grade level in Algebra I and Biology. Session

Laws 2003-284, s. 7.20(a) was repealed by Session Laws 2004-124, s. 7.14.

Session Laws 2003-284, s. 7.20(b), effective July 30, 2003, and expiring June 30, 2004, provides: "In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4) if:

"(1) A teacher who receives a bonus pursuant to subsection (a) of this section is reassigned to a school at which there is no such bonus;

"(2) A teacher who receives a bonus pursuant to subsection (a) of this section is reassigned to teach in a field for which there is no such bonus; or

"(3) A teacher receives a bonus pursuant to subsection (a) of this section and the bonus is subsequently discontinued or reduced."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, ss. 31.18A(e)-(g), as amended by Session Laws 2004-161, s. 53.2, provides: "(e) The Retirement Systems Division shall conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. The Retirement Systems Division shall develop findings and recommendations for the adoption of an efficient and fiscally sound policy on postretirement reemployment and shall report those findings and recommendations, as well as the analysis that produced them, to the General Assembly by February 1, 2005.

"(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling maybe obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment.

"(g) Notwithstanding any other provision of law, effective July 1, 2004, each local school administrative unit or charter school participating in the Teachers' and State Employees' Retirement System shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit or charter school shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, effective July 1, 2004, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-199, s. 57(c), as amended by 2005-276, s. 29.28(d), as amended by Session Laws 2007-145, s. 7(e), and as amended by Session Laws 2007-326, s. 3(e), provided that the amendment to subdivision (a)(5a), as amended by Session Laws 2004-199, would expire October 1, 2007. Session Laws 2007-326, s. 2, effective October 1, 2007, and expiring October 1, 2009, provided that G.S. 115C-325(a)(5a) is reenacted on August 1, 2007.

Session Laws 2005-276, s. 29.28(c), provides: "Notwithstanding any other provision of law, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position, shall be paid from local funds."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 7.21(b) provides: "In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4) if:

"(1) A teacher who receives a salary supplement pursuant to subsection (a) of this section is reassigned to a school at which there is no such salary supplement;

"(2) A teacher who receives a salary supplement pursuant to subsection (a) of this section moves to a different local school administrative unit; or

"(3) A teacher receives a salary supplement pursuant to subsection (a) of this section and the salary supplement is subsequently discontinued or reduced."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-326, s. 4, effective October 1, 2007, and expiring October 1, 2009, provides: "Notwithstanding any other provision of law, effective July 1, 2007, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this section.

"Notwithstanding any other provision of law, effective July 1, 2007, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2009-326, s. 2, provides that subdivision (m)(4) of G.S. 115C-325, as enacted by Session Laws 2009-326, s. 1, is applicable to proceedings initiated after August 31, 2010.

Effect of Amendments. — Session Laws 2007-326, effective October 1, 2007, and expiring October 1, 2009, reenacted subdivision (a)(5a) on August 1, 2007, and rewrote the subdivision.

Session Laws 2009-326, s. 1, effective July 24, 2009, and applicable to proceedings initiated after August 31, 2009, rewrote subsection (c); and added subdivisions (m)(3) through (m)(7). For applicability provision for subdivision (m)(4), see Editor's note.

Legal Periodicals. — For note on racial discrimination in teacher hiring and firing, see 45 N.C.L. Rev. 166 (1966), commenting on Wheeler v. Durham City Bd. of Educ., 363 F.2d 738 (4th Cir. 1966) and Chambers v. Hendersonville City Bd. of Educ., 364 F.2d 189 (4th Cir. 1966).

For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

For article, "Teacher Renewal in North Carolina," see 14 Wake Forest L. Rev. 739 (1978).

For comment on defining inadequate performance under the North Carolina Tenured Teacher Fair Dismissal Act, see 3 Campbell L. Rev. 77 (1981).

For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

CASE NOTES

I. In General.
II. Probationary Teachers.
III. Career Teachers.
IV. Principals and Supervisors.
V. Grounds for Dismissal or Demotion.
VI. Notice and Hearing.
VII. Judicial Review.
VIII. Resignation.

I. IN GENERAL.

Editor's Note. — *Many of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Constitutionality. — The procedures provided by former corresponding statute did not violate the due process guarantees of the United States Constitution. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Subdivision (e)(1)b is constitutional. Barringer v. Caldwell County Bd. of Educ., 123 N.C. App. 373, 473 S.E.2d 435 (1996).

Subdivision (e)(1) Not Void for Vagueness. — Subdivision (e)(1), which authorizes the dismissal of a career teacher for "inadequate performance," is not unconstitutionally void for vagueness. The term "inadequate performance," in regard to a job, can be readily understood by any person of ordinary intelligence who knows what the job entails. Crump v. Durham County Bd. of Educ., 77 N.C. App. 74, 327 S.E.2d 599 (1985).

Legislative Intent. — When subdivision (e)(1)*l* of this section is read in pari materia with other relevant portions of this section, it is apparent that the legislature intended to grant local school boards wide discretion in deciding whether to reduce personnel in response to decreased funding. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

The manifest purpose of this section is to provide teachers of proven ability for the children of this State, by protecting such teachers from dismissal for political, personal, arbitrary or discriminatory reasons. Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

Teachers Provided with Greater Security. — Tenure in employment has long been a laudable objective of the teaching profession, and former provisions corresponding to this section provided teachers with much greater security than they had theretofore had. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974), aff'd and remanded, 286 N.C. 488, 212 S.E.2d 381 (1975).

Former corresponding section represented a legislative attempt to provide the public school teachers of this State a greater amount of job security than had previously existed. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Former corresponding section provided greater job security for career public school teachers, as defined, than existed under prior law. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

Civil Action Dismissed for Failure to Exhaust Administrative Remedies. — See Church v. Madison County Bd. of Educ., 31 N.C. App. 641, 230 S.E.2d 769 (1976), cert. denied and appeal dismissed, 292 N.C. 264, 233 S.E.2d 391 (1977).

Coaches Distinguished from Career Teachers. — Subdivision (a)(4) distinguishes between teaching and coaching because the statute classifies coaching as a "special duty" in addition to regular teaching duties; coaching is not protected by the tenure provisions of subsection (d), which apply to career teachers and protect them from dismissal, demotion, or employment on a part time basis. Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833, cert. denied, appeal dismissed, 340 N.C. 358, 458 S.E.2d 184 (1995).

Applied in Burrow v. Randolph County Bd. of Educ., 61 N.C. App. 619, 301 S.E.2d 704 (1983); Davidson v. Winston-Salem/Forsyth County Bd. of Educ., 62 N.C. App. 489, 303 S.E.2d 202 (1983); Faulkner v. New Bern-Craven County Bd. of Educ., 65 N.C. App. 483, 309 S.E.2d 548 (1983); Nestler v. Chapel Hill/Carrboro City Sch. Bd. of Educ., 66 N.C. App. 232, 311 S.E.2d 57 (1984); Goodwin v. Goldsboro City Bd. of Educ., 67 N.C. App. 243, 312 S.E.2d 892 (1984); Spry v. Winston-Salem/Forsyth County Bd. of Educ., 105 N.C. App. 269, 412 S.E.2d 687 (1992); Madey v. Duke Univ., — F. Supp. 2d —, 1999 U.S. Dist. LEXIS 21379 (M.D.N.C. Dec. 1, 1999).

Cited in Crump v. Board of Educ., 93 N.C. 168, 378 S.E.2d 32 (1989); Crump v. Board of Educ., 326 N.C. 603, 392 S.E.2d 579 (1990); Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002); Love-Lane v. Martin, 201 F. Supp. 2d 566, 2002 U.S. Dist. LEXIS 17219 (M.D.N.C. 2002); Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151, 2004 N.C. App. LEXIS 1160 (2004).

II. PROBATIONARY TEACHERS.

"Probationary Teacher". — The General Assembly did not intend that the "temporary personnel" authorized by G.S. 115C-295 be included within the definition of "probationary teacher" contained in subdivision (a)(5) of this section. Campbell v. Board of Educ., 76 N.C. App. 495, 333 S.E.2d 507 (1985), cert. denied, 315 N.C. 390, 338 S.E.2d 878 (1986).

Subdivision (m)(2) imposes duty on boards of education to determine substantive basis for recommendations of nonrenewal and to assure that nonrenewal is not for a prohibited reason. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

As the legislature intended to afford probationary teachers minimum protection against arbitrary nonrenewal permitted under the common law. The discretion of the boards with respect to probationary teachers remains very broad, of course, but the decision not to renew must have some nonarbitrary basis. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

Board Must Ascertain Basis for Superintendent's Recommendation. — The advisory nature of the superintendent's recommendation to not rehire a nontenured teacher places the responsibility on the board to ascertain the rational basis for the recommendation before acting upon it. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

As Ultimate Responsibility Rests with Board. — School board may refuse to renew probationary teacher's contract upon recommendation of the superintendent. That recommendation is only advisory, however; ultimate responsibility rests with the board. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

Formal order is not required to be prepared each time Board of Education decides not to renew probationary teacher's contract, but the board's records should reflect the specific substantive reason for the nonrenewal of his contract. Abell v. Nash County Bd. of Educ., 71 N.C. App. 48, 321 S.E.2d 502 (1984).

As to board's consideration of the renewal of a probationer's contract or the employment of a teacher who is not under contract, see also Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975); Sigmon v. Poe, 564 F.2d 1093 (4th Cir. 1977).

Computation of Notice Period. — The employment period for salary purposes is the appropriate period to use in computing the requisite 30-day notice period for probationary teacher. Fleming v. Vance County Bd. of Educ., 60 N.C. App. 263, 298 S.E.2d 733 (1983).

Probationary Teacher Has No Right to Hearing. — Where a local school board determined not to renew the contract of a teacher who did not have tenure or any "equivalent of tenure," he was not entitled to a full due-process adversary hearing. Williams v. Hyde County Bd. of Educ., 490 F.2d 1231 (4th Cir. 1974), cert. denied, 501 U.S. 1238, 111 S. Ct. 2870, 115 L. Ed. 2d 1035 (1991).

When a school superintendent recommended to a school board that a probationary teacher's contract, which had expired, not be renewed, G.S. 115C-325(n) did not give the teacher a right to an evidentiary hearing before the board because, while specifying that career employees or school administrators whose contracts were not renewed had to seek a hearing before a school board as a prerequisite to judicial review, the general assembly made no such provision for probationary teachers. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

G.S. 115C-325(m) did not give the teacher a right to an evidentiary hearing before the board because, while it specified that a probationary teacher whose contract was not renewed during the school year could exercise the procedures in G.S. 115C-325(h) through (j3) available to career employees regarding non-renewals, which included a hearing before the board, it stated that, upon the expiration of a probationary teacher's contract, the board could refuse to renew the contract for any cause it deemed sufficient, and did not state that a probationary teacher had a right to an evidentiary hearing before the board. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

When a school superintendent recommended to a school board that a probationary teacher's contract, which had expired, not be renewed, G.S. 115C-325(o) did not give the teacher a right to an evidentiary hearing before the board because a reasonable construction of that statute was that the board only had to notify a probationary decision of the board's decision not to renew the teacher's contract once that decision was made, rather than the prior notice required, under G.S. 115C-287.1(d), in the cases of school administrators and career teachers. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Hearing afforded to probationary teacher satisfied minimum due process standards to which he would have been entitled, had he had a valid claim to a hearing. Satterfield v. Edenton-Chowan Bd. of Educ., 530 F.2d 567 (4th Cir. 1975).

Criteria for Renewal of Contract of Probationary Teacher Who Serves as Coach. — Given the broad legislative grant of authority over the status of probationary teachers and the legislative grant to local boards under G.S. 115C-47(4), requiring them to promulgate rules and regulations for interscholastic athletics, a board may properly consider coaching changes as a basis for determining whether to renew a probationary teacher's contract when the teacher also serves as a coach. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

Nonrenewal Must Have Non-Arbitrary Basis. — The discretion of school boards regarding the status of probationary teachers remains very broad, but a nonrenewal decision must have some non-arbitrary basis in order to comply with subdivision (m)(2) of this section. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

An arbitrary or capricious reason is one without any rational basis in the record, such that a decision made thereon amounts to an abuse of discretion. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

Whether school board's action in not renewing contracts was "arbitrary or capricious" is a mixed question of law and fact. The jury determines the factual issues involved and the judge applies these findings to determine whether the nonrenewals were arbitrary or capricious as a matter of law. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

Arbitrary or Capricious Failure to Renew Contract Gives Rise to Right of Action. — Any claim of an arbitrary or capricious denial of renewal of a probationary teacher's contract gives rise to a right of action, which is to be resolved by a proper court and not by the board. Sigmon v. Poe, 528 F.2d 311 (4th Cir. 1975).

And Question Is Not to Be Resolved by Board. — Whether there has been a denial of renewal of plaintiff's contract for "arbitrary, capricious, discriminatory or for personal or political reasons" is not a question to be resolved by the board. Sigmon v. Poe, 528 F.2d 311 (4th Cir. 1975).

If there is a claim of "arbitrary or capricious" nonrenewal, it is an independent right of action, triable, not by the school board, but by the court. Satterfield v. Edenton-Chowan Bd. of Educ., 530 F.2d 567 (4th Cir. 1975).

Following Superintendent's Recommendation Against Rehiring Not Arbitrary or Capricious. — A school board's failure to renew a probationary teacher's contract because the principal and superintendent recommended that he not be rehired would not be arbitrary, capricious, or for personal reasons, since the superintendent is entitled to make such recommendations. Hasty v. Bellamy, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

Failure to Rehire Based on Teacher's Refusal to Sign Document. — Failure to rehire a probationary teacher who would have become a career teacher upon the removal of his contract, based solely on the teacher's refusal to sign a document which to a layman might easily appear damaging, though it in fact had no practical effect, might be an arbitrary and capricious cause for not hiring the teacher. Hasty v. Bellamy, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

Protection Against Discharge for Probationary Teacher During School Year. — A probationary teacher may not be dismissed at mid-year except for reasons that a career teacher may be dismissed, such as lack of funding, and may only be dismissed according to the procedures applicable to mid-year or discharge of a career teacher. Thus, the statutory protections are greater for probationary teachers sought to be discharged at mid-year. Taborn v. Hammonds, 83 N.C. App. 461, 350 S.E.2d 880 (1986).

Burden of Proof. — Section 115C-44(b) clearly places the burden of proof on plaintiff probationary school teachers to establish that the actions of the board in failing to renew their contracts were arbitrary or capricious. Moreover, the burden of proof includes not only the burden of going forward with the evidence, but also the burden of persuasion. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

Nonrenewals Upheld. — Evidence was not sufficient to support a finding that nonrenewals of probationary teachers' contracts were "arbitrary or capricious," and instead established a rational basis for the nonrenewals. Abell v. Nash County Bd. of Educ., 89 N.C. App. 262, 365 S.E.2d 706 (1988).

In deciding not to renew a teacher's contract, a school board satisfied its duties to determine the substantive basis for the recommendation of nonrenewal and to ensure that the nonrenewal was not for a prohibited reason; the administrative record showed that the teacher's contract was not renewed because the teacher threatened to be a counterproductive force concerning faculty morale, based upon several instances of the teacher's conduct. Davis v. Macon County Bd. of Educ., 178 N.C. App. 646, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

III. CAREER TEACHERS.

Career Teacher Status Created. — Former corresponding section created the status of "career teacher," to which various rights and privileges are attached. Perhaps the most important of these rights is that a career teacher may not be dismissed or demoted except upon specified grounds and in accordance with the statutory procedures provided. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

But Grant of Career Status Not Instantaneous. — Since former corresponding section conferred upon career teachers additional security in their employment, it did not grant instant career status to all teachers presently employed, but provided appropriate methods through which a teacher could acquire career status. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974), aff'd and remanded, 286 N.C. 488, 212 S.E.2d 381 (1975).

Board Confers Career Status. — Under former statute (see now subsection (c)), the board of education votes upon the continued employment of a probationary teacher when such reemployment has the effect of granting career status. This is not simply a matter of renewing the contract of a probationary teacher who will again be considered before being granted career status. The board of education is reaching a decision which confers career status, and the legislature has determined that this decision shall be made by the elected board, which has ultimate control and supervision of all matters pertaining to the public schools. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974), aff'd and remanded, 286 N.C. 488, 212 S.E.2d 381 (1975).

Board is not required to follow the recommendation of the superintendent when it considers the election of career teachers. Taylor v. Crisp, 286 N.C. 488, 212 S.E.2d 381 (1975).

Case Manager's Findings of Fact Binding When Supported by Substantial Evidence. — Respondent school board was bound by the findings of the case manager under subdivision (j2)(7) and, therefore, erred in making alternative findings of fact where there was substantial evidence to support the case manager's findings of fact. Farris v. Burke County Bd. of Educ., 143 N.C. App. 77, 544 S.E.2d 578, 2001 N.C. App. LEXIS 224 (2001), cert. granted, 353 N.C. 725, 550 S.E.2d 773 (2001), cert. granted, 353 N.C. 725, 550 S.E.2d 772 (2001).

A school board initially reviewing the results of a case manager's hearing, regarding the termination of a career employee, is bound by the whole record admitted and considered by the case manager; but, because G.S. 115C-325(j2)(7) contemplates a remand to the case manager if a majority of the board determines that the case manager did not address a critical factual issue, the school board may nevertheless view evidence excluded by the case manager but later submitted to the board in making its initial determination whether the case manager addressed all critical issues. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

If a school board chooses not to accept a case manager's report concerning the termination of a career employee as submitted to it, then pursuant to G.S. 115C-325(j2)(7), the board should determine either (1) that the case manager's findings of fact are not supported by substantial evidence admissible under G.S. 115C-325, in which case it can make alternative findings of fact; or (2) that the case manager failed to consider a critical factual issue, in which case the board should remand the matter for the case manager to make additional findings of fact; and where a board's conclusion that the case manager failed to consider a critical factual issue is based upon the case manager's rulings excluding evidence, the case manager, on remand, remains bound by the provisions of G.S. 115C-325 limiting the evidence which may properly be considered and within those limits may either reconsider or reaffirm those evidentiary rulings. A board may thereafter substitute its findings of fact for those of the case manager only if the case manager does not respond to the board's request within seven days. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

When a school board does not follow proper procedures in reviewing a case manager's report and recommendation concerning the termination of a career employee, it is bound by the case manager's findings of fact, pursuant to G.S. 150B-51(b)(3). Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Dismissal. — Plaintiff who had attained the status of a career teacher under subsection (c) could not be dismissed or demoted except for reasons specified in subdivision (e)(1); therefore, plaintiff's claim based on the tort of wrongful discharge was correctly dismissed by the trial court. Wagoner v. Elkin City Schs. Bd. of Educ., 113 N.C. App. 579, 440 S.E.2d 119, cert. denied, 336 N.C. 615, 447 S.E.2d 414 (1994).

IV. PRINCIPALS AND SUPERVISORS.

Principal Included in Definition of "Teacher". — This section governs the hiring, firing, tenure and resignation of public school teachers, and its definition of "teacher" includes those who directly supervise teaching, as plaintiff did when he was principal of high school. Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986).

Legislature intended in subsection (d)(2) to protect persons who have served as principals and supervisors for at least three consecutive years, regardless of whether this time was served prior to obtaining career teacher status. Faison v. New Hanover County Bd. of Educ., 75 N.C. App. 334, 330 S.E.2d 511 (1985), decided under facts existing prior to 1983 amendment.

Board Need Not Consider Superintendent's Recommendation to Rehire Principal. — The board was not required to consider the recommendation of a superintendent that a principal be rehired for the school year 1973-74, but was free to refuse to rehire him as it chose. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974), aff'd and remanded, 286 N.C. 488, 212 S.E.2d 381 (1975).

Plaintiff, as a probationary principal, had a statutorily protected right in his job as a career teacher, and absent plaintiff's resignation as a career teacher, defendant board of education could not take this right away without affording him the statutorily mandated procedures of notice and hearing.

Rose v. Currituck County Bd. of Educ., 83 N.C. App. 408, 350 S.E.2d 376 (1986).

Cause of Action Against Board of Education for Negligent Employment and Retention of Principal. — For a case involving cause of action under common law against county board of education for negligent employment and retention of principal who sexually assaulted a student, see Medlin v. Bass, 327 N.C. 587, 398 S.E.2d 460 (1990).

Authority of Board of Education. — When a merger of a county and two city school systems was ratified by the General Assembly, the ratification impliedly repealed the former county board of education's ability to enter into an employment contract to be in effect after the effective date of the merger. Therefore, the attempt by the Board to enter into an employment contract with the superintendent, which would be binding if the merger were approved, was made without actual authority and was unenforceable. Guilford County Bd. of Comm'rs v. Trogdon, 124 N.C. App. 741, 478 S.E.2d 643 (1996).

V. GROUNDS FOR DISMISSAL OR DEMOTION.

Decision of School Board Must Be Justifiable. — The issue to be resolved by the courts in reviewing a teacher dismissal under subdivision (e)(1)*l* of this section is whether the board's decision to reduce teaching positions is supported by a rational basis, and given the presumption in favor of a board's decision under G.S. 115C-44(b), a career teacher is entitled to relief in such cases only upon showing that the board's action was personal, political, discriminatory, without a rational basis or simply a subterfuge to avoid the protections extended the teacher by law due to his or her status as a career teacher. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

A school superintendent is not required to set out the facts supporting a case for termination of a career employee in complete detail prior to a hearing before a case manager, as the provisions of Chapter 115C, G.S. 115C-1 et seq., do not mirror the discovery proceedings in either criminal or civil cases. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

The issue to be resolved by the courts in reviewing a teacher dismissal under paragraph (e)(1)*l* is whether the board's decision to reduce teaching positions is supported by a rational basis; given the presumption in favor of the board's decision under G.S. 115C-44(b), a career teacher is entitled to relief in such cases only upon a showing that the board's action was personal, political, discriminatory, without a rational basis, or simply a subterfuge to avoid the protections extended the teacher by law due to his or her status as a career teacher. Moreover, the role of the reviewing court is to assure the proper application of this standard, not to substitute its preferences for those of the board. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

Rational Basis for Board's Decision. — Where board of education stated that the basis for its decision to make a reduction-in-force was that remaining funds were inadequate to meet the salaries of existing personnel, and program quality could be maintained with a smaller instructional staff, there was a rational basis for the board's decision, and no more was required under paragraph (e)(1)*l*. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

Evidence to Show Arbitrariness or Capriciousness. — While there is no independent right of action against a school board pursuant to (former) G.S. 115C-326, the failure of the school board to comply with evaluation procedures established under that section may be submitted as evidence in an action brought by a claimant pursuant to this section, to establish that his dismissal was arbitrary or capricious. Clinton v. Wake County Bd. of Educ., 108 N.C. App. 616, 424 S.E.2d 691 (1993).

Immorality. — Characterization of a female student as a whore did not warrant a finding of immorality. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Actionable Sexual Harassment. — Given the provisions of G.S. 143-422.2, 115C-335.5, 115C-325 and 14-395.1, there was no question that the right to be free of sexual harassment in the workplace was implicated in declaration of North Carolina's public policy. Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151, 2004 N.C. App. LEXIS 1160 (2004), cert. denied, 359 N.C. 75, 605 S.E.2d 151 (2004).

Sexual Harassment and Inappropriate Conduct by Principal. — Affidavits showing that school principal propositioned for sex, pressed his body against others, unzipped his pants, and touched buttocks, among other things, provided substantial evidence to support school board's decision to terminate his employment; affidavits were properly received documentary evidence, under G.S. 115C-325(j2). Smith v. Richmond County Bd. of Educ., 150 N.C. App. 291, 563 S.E.2d 258, 2002 N.C. App. LEXIS 488 (2002).

Insubordination — Defined. — Insubordination under paragraph (e)(1)c imports a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977); Crump v. Board of Educ., 79 N.C. App. 372, 339 S.E.2d 483, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986).

Same — Repeated Misconduct. — Repeated acts of teacher misconduct which are obviously contrary to accepted standards of behavior in the teaching profession and the community in general should constitute insubordinate conduct. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Same — Dismissal Upheld. — The Board of Education's dismissal of a driver's education instructor on the ground of insubordination would be upheld, where there was substantial evidence to support the Board's conclusion that by twice driving alone with a female student, after a complaint from a female student about his conduct, the instructor willfully disregarded and refused to obey the principal's reasonable directive that at least two students be in the car any time a female was taking the road work phase of driver's education. Crump v. Board of Educ., 79 N.C. App. 372, 339 S.E.2d 483, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986).

Neglect of Duty. — The term "neglect of duty" is defined as a failure to perform some duty imposed by contract or law and encompasses, clearly, the failure to report for work. However, a dismissal upon this ground alone cannot be sustained unless it is proven that a reasonable man would have recognized the duty and would have considered himself obliged to conform. Overton v. Goldsboro City Bd. of Educ., 304 N.C. 312, 283 S.E.2d 495 (1981).

Physical Incapacity. — Physical incapacity under this section refers to a present and continuing inability to perform the duties and meet the responsibilities and physical demands customarily associated with the individual's job as a career teacher in the public schools. The incapacity must be in effect at the time action is taken by the board of education. The projected duration of the incapacity must be long-term or indefinite, with no reasonable prospect for rapid rehabilitation. Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

While physical incapacity may adversely affect a teacher's job performance, it does not necessarily follow that poor performance will always accompany less than perfect health. Bennett v. Hertford County Bd. of Educ., 69 N.C. App. 615, 317 S.E.2d 912, cert. denied, 312 N.C. 81, 321 S.E.2d 893 (1984).

Habitual or Excessive Use of Alcohol. — Evidence that teacher, during the 1980-81 school year, consumed some form of alcoholic beverages at school or had the odor of alcohol on his breath at school during instructional hours, and that during the school day on occasions during the 1981-1982 school year, after reprimand and warning against the same, consumed alcoholic beverages, or had the odor of alcohol on his breath, showed conduct which, when ascribed to a career teacher in North Carolina, constituted "habitual or excessive use of alcohol" within the meaning and intent of this section, becoming thereby lawful grounds for dismissal. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

County board of education was entirely proper in concluding that a course of conduct involving the use of alcohol by a teacher on school property during school hours, the same being obvious to his students and other school personnel and parents, repeated after continued warnings, was "excessive" within the meaning of this section, and having properly found this course of conduct to exist, the board acted lawfully in exercising its authority to dismiss this teacher. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

Going to Pool Room with Loaded Shotgun. — A reasonable public school teacher of ordinary intelligence would know that going to a pool room with a loaded shotgun constituted conduct likely to become known to the general student population and would manifest a poor example; thus, teacher was properly dismissed. Barringer v. Caldwell County Bd. of Educ., 123 N.C. App. 373, 473 S.E.2d 435 (1996).

The regulations prescribing a teacher's speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. Frison v. Franklin County Bd. of Educ., 596 F.2d 1192 (4th Cir. 1979).

Teachers who are entrusted with the care of small children and adolescents are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

In balancing teacher's free speech interest and employer's administrative interest, the concern is weighing the degree of public interest in the particular expression by the teacher against the degree to which the teacher's conduct was justifiably viewed by a superintendent acting on behalf of the Board of Education as an actual or potential disruption of the operations for which the board is responsible. Stated generally, the factors to be taken into consideration include: whether the employee's personal employment situation is substantially involved in the subject matter of his speech; whether the employee's speech would tend to harm the professional reputation of its target; whether the employee's speech would tend to undermine working relationships essential to the efficient operation of the governmental activity involved; and whether the personnel actions being challenged would tend to chill the employee's exercise of his free speech rights. Gregory v. Durham County Bd. of Educ., 591 F. Supp. 145 (M.D.N.C. 1984).

Decrease in Funding. — When subsection (e)(1)*l* is read in pari materia with other relevant provisions of this section, it is apparent that the legislature intended to grant local school boards wide discretion in deciding whether to reduce personnel in response to decreased funding. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

Program-Specific Remedy to Funding Reduction. — When faced with funding reductions in a particular program, it was justifiable for a board of education to fashion a remedy that was program-specific; a board of education is not required to look across its entire budget to provide the salary for teaching positions when money originally available becomes unavailable due to a reduction of funds for an external grant program. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

Reduction of Teaching Positions in Program for Which Funds Are Cut. — City board of education was justified in reducing the number of teaching positions for its exceptional children program, where the city schools had lost a substantial portion of State and federal funds for that program; a board of education is not required to look across its entire budget to provide the salary for teaching positions when money originally available becomes unavailable due to a reduction of funds for an external grant program. Taborn v. Hammonds, 324 N.C. 546, 380 S.E.2d 513 (1989).

Compensation for Improper Demotion. — Director of vocational education, demoted without statutory procedural safeguards, was entitled to salary adjustment to compensate him for any loss of salary and benefits which he suffered because of his improper demotion. Faison v. New Hanover County Bd. of Educ., 75 N.C. App. 334, 330 S.E.2d 511 (1985).

Teacher suspended without pay need not have requested reinstatement to his position when the ninety-day time period elapsed; this reinstatement was automatic. Davis v. Public Schs., 115 N.C. App. 98, 443 S.E.2d 781, cert. denied, 337 N.C. 690, 448 S.E.2d 519 (1994).

Subsequent Dismissal Proceedings Not Barred. — The General Assembly, in enacting this section, did not intend to prohibit the initiation of dismissal proceedings against a teacher who has been suspended with pay once 90 days beyond the date of such suspension have lapsed. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

While this section clearly requires the reinstatement of a teacher who has been suspended with pay once 90 days without the initiation of dismissal proceedings have lapsed, it does not prohibit the subsequent initiation of dismissal proceedings against such teacher. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

VI. NOTICE AND HEARING.

The purpose of the private hearing provision is as much for the protection of the teacher involved as for the school officials. It is a provision that finds a counterpart in other types of proceedings, since the public hearing or trial concept, while embedded in U.S. Const., Amend. VI as a requirement of criminal trials, is not inflexibly applied in all civil proceedings. Satterfield v. Edenton-Chowan Bd. of Educ., 530 F.2d 567 (4th Cir. 1975).

The Rules of Evidence, § 8C-1, are not applicable to teacher dismissal hearings before a board of education. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Rules of Evidence and Civil Procedure Not Applicable. — The procedures prescribed by this section for the dismissal of a career teacher are essentially administrative rather than judicial. The board is not bound by the formal rules of evidence which would ordinarily obtain in a proceeding in a trial court. Nor are the Rules of Civil Procedure, G.S. 1A-1, applicable. Baxter v. Poe, 42 N.C. App. 404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

Advance Notice of Witnesses and Evidence. — Although G.S. 115C-325(j)(4) provides that formal rules of evidence do not apply to a hearing before a case manager regarding the termination of employment of a career employee of a board of education, there is no ambiguity in the notice requirements applicable to such a hearing set out in G.S. 115C-325(j)(5), which require that the employee be given advance notice of witnesses, their testimony, and documentary evidence. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Latitude Permitted in Procedure and Reception of Evidence. — While a board of education conducting a hearing must provide all essential elements of due process, it is permitted to operate under a more relaxed set of rules than is a court of law. Boards of education, normally composed in large part of nonlawyers, are vested with the general control and supervision of all matters pertaining to the public schools in their respective administrative units, a responsibility differing greatly from that of a court. The carrying out of such a responsibility requires a wider latitude in procedure and in the reception of evidence than is allowed a court. Baxter v. Poe, 42 N.C. App. 404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

Kind of Evidence Admitted. — As long as evidence which is proffered at a teacher dismissal hearing can be said to be of a kind commonly relied upon by reasonably prudent persons in the conduct of serious affairs, such evidence is competent and may properly be admitted into evidence. Evers v. Pender County Bd. of Educ., 104 N.C. App. 1, 407 S.E.2d 879 (1991), aff'd, 331 N.C. 380, 416 S.E.2d 3 (1992).

Evidence Must Be Based on Grounds Stated in Notice. — This section was held to prohibit respondent county school board from basing petitioner career teacher's dismissal on grounds not stated in the subdivision (h)(2) notice provided to petitioner; notice of the grounds for her dismissal and an explanation of the basis for her dismissal were based on alleged insubordination, inadequate performance, and neglect of duty, but respondent improperly relied upon evidence excluded by the case manager relating to petitioner's field trips, telephone calls to a psychic hot-line, nonteaching activities, maintenance of Exceptional Children records, and relationship with a particular student. Farris v. Burke County Bd. of Educ., 143 N.C. App. 77, 544 S.E.2d 578, 2001 N.C. App. LEXIS 224 (2001), cert. granted, 353 N.C. 725, 550 S.E.2d 773 (2001), cert. granted, 353 N.C. 725, 550 S.E.2d 772 (2001).

Hearsay Held Not Violative of Due Process. — Certain hearsay testimony, at an informal hearing conducted by the board, did not violate due process. Satterfield v. Edenton-Chowan Bd. of Educ., 530 F.2d 567 (4th Cir. 1975).

Evidence of Events More Than Three Years Past Is Admissible. — While a board of education is prohibited from basing dismissal "on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher," there is no prohibition against the board hearing evidence of events which occurred more than three years before the hearing. Baxter v. Poe, 42 N.C. App. 404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

But Only as Background Information. — Although a personnel file may be consulted with regard to disciplinary matters, information in it regarding conduct occurring more than three years prior may not serve as a basis for a dismissal or demotion, but only as background for such action. Gregory v. Durham County Bd. of Educ., 591 F. Supp. 145 (M.D.N.C. 1984).

Evidence Used to Refresh Recollection Only. — In hearing before board of education regarding teacher's dismissal, superintendent's use of a document containing a summary of standardized test results was used only to refresh the principal's recollection and was never presented into evidence; therefore, there was no violation of subdivision (j)(5). Hope v. Charlotte-Mecklenburg Bd. of Educ., 110 N.C. App. 599, 430 S.E.2d 472 (1993).

Case Manager Not Authorized to Make Conclusions of Law. — Nowhere does G.S. 115C-325 authorize a case manager to reach conclusions of law in hearing a school superintendent's recommendation to terminate a career employee. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

VII. JUDICIAL REVIEW.

Judicial Review Is Part of Statutory Grievance Procedure. — Since judicial review is part of statutory grievance procedure, it should not be conducted in a federal court under the doctrine of pendent jurisdiction. Frison v. Franklin County Bd. of Educ., 596 F.2d 1192 (4th Cir. 1979).

Judicial Review Not Available Where Hearing on Dismissal Was Not Requested. — Under G.S. 115C-325(n), judicial review was not available to a career status teacher who was dismissed without having requested a hearing before the board of education, as failure to request a school board hearing precluded judicial review Hummer v. Pulley, Watson, King & Lischer, P.A., 157 N.C. App. 60, 577 S.E.2d 918, 2003 N.C. App. LEXIS 375 (2003), cert. denied, 357 N.C. 459, 585 S.E.2d 758 (2003).

The role of a court in reviewing a dismissal proceeding is to examine the whole record to determine whether there is substantial evidence on which the findings of the school board are based and whether the conclusions are based on such facts and are not contrary to law. If the school board's findings and conclusions are substantiated in this manner, its order should be affirmed, regardless of the number or nature of the offenses charged. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Creating Record for Review. — Where an appeal to the superior court, under G.S. 115C-325(n), presents a teacher his or her first opportunity to establish a record supporting allegations of impropriety before a school board considering termination of the teacher's employment, it is incumbent upon the teacher to create a record supporting the allegations at that time for any further reviewing courts. Farris v. Burke County Bd. of Educ., 355 N.C. 225, 559 S.E.2d 774, 2002 N.C. LEXIS 187 (2002).

Standards for Review. — The standards for judicial review set forth in G.S. 150A-51 (see now G.S. 150B-51) are applicable to appeals from school boards to the courts, since no other statute provides guidance for judicial review of school board decisions, in the interest of uniformity in reviewing administrative board decisions. Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

When a teacher claimed that her contract had not been renewed because of personal reasons, the trial court properly applied a whole-record standard of review; the school board's motivation in not renewing the contract was an issue of fact. Davis v. Macon County Bd. of Educ., 178 N.C. App. 646, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

In determining whether a school board properly determined not to renew a teacher's contract under G.S. 115C-325(m)(2), the trial court had looked at all of the evidence and determined that there was substantial evidence to support the board's determination, even without inaccurate information contained in a memorandum; in doing so, it had properly applied the whole record test to the evidence presented to the board, and this justified its later denial of the teacher's motion for reconsideration. Davis v. Macon County Bd. of Educ., 178 N.C. App. 646, 632 S.E.2d 590, 2006 N.C. App. LEXIS 1644 (2006).

When a probationary teacher sought judicial review of a school board's decision not to renew the teacher's contract, a record showing that the school administration investigated allegations that the teacher inappropriately used a ruler and profanity while teaching, found these allegations to be supported by evidence, communicated these findings to the school board, in addition to information about the teacher's "below standard" and "unsatisfactory" performance evaluation with respect to certain elements, and that, in conjunction with all of this information, the superintendent recommended that the teacher's contract not be renewed, was sufficient under the whole record test to support the board's decision as non-arbitrary. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Scope of Review. — On appeal of dismissal, review was limited to determining whether the superior court correctly decided that the board's decision to dismiss plaintiff on the grounds of immorality and insubordination was supported by substantial evidence in light of the whole record. Crump v. Board of Educ., 79 N.C. App. 372, 339 S.E.2d 483, cert. denied, 317 N.C. 333, 346 S.E.2d 137 (1986).

What Evidence Considered on Review. — Although the reviewing superior court must still look for substantial evidence in the record as a whole which is competent and material, it may not exclude testimony from its consideration merely because it would otherwise violate a rule of evidence. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

When a probationary teacher sought judicial review of a school board's decision not to renew the teacher's contract, a trial court properly struck exhibits the teacher proffered to the trial court because the trial court's review was limited to the record before the school board. Moore v. Charlotte-Mecklenburg Bd. of Educ., 185 N.C. App. 566, 649 S.E.2d 410, 2007 N.C. App. LEXIS 1936 (2007).

Consideration of Panel Report. — A trial judge reviewing a school board decision must not only consider the complete testimony of all the witnesses, he must also consider the panel report of the Professional Review Committee, which is "deemed to be competent evidence," and when it is introduced, becomes part of the record. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

Statute of Limitations. — A civil action in which plaintiff sought reinstatement as a classroom teacher in defendant board of education's school system and back pay and other benefits arising out of defendant's alleged violation of the Teacher Tenure Act was not governed by the two year statute of limitations set out in G.S. 1-53(1), which applies to an action upon a contract against a local unit of government; the applicable statute of limitations was the three year statute in G.S. 1-52(2) "upon a liability created by statute." Rose v. Currituck County Bd. of Educ., 83 N.C. App. 408, 350 S.E.2d 376 (1986).

Plaintiff teacher's claim was properly before the Superior Court even though the complaint was filed approximately two years after the non-renewal decision by defendant school board, where her alleged injury occurred in 1996 when there was no special statutory appeal procedure for probationary teachers and the amendment to this section was not yet codified. Craig v. Asheville City Bd. of Educ., 142 N.C. App. 518, 543 S.E.2d 186, 2001 N.C. App. LEXIS 145 (2001).

Teacher's claim for declaratory judgment under G.S. 115C-325(c)(2) was time-barred by the three year statute of limitations under G.S. 1-52(2), as the teacher did not timely file his claim and the continuing wrong doctrine did not apply. Because the teacher had obtained career status in a public school system, under G.S. 115C-325(c)(2), the board of education was required to vote on his career status by 15 June 2001; however, the teacher did not file his complaint until 15 June 2005. Hicks v. Wake County Bd. of Educ., 187 N.C. App. 485, 653 S.E.2d 236, 2007 N.C. App. LEXIS 2422 (2007).

Dismissal Upheld. — Competent and substantial evidence existed to support the education board's findings and conclusion that petitioner teacher should be dismissed for insubordination. Hope v. Charlotte-Mecklenburg Bd. of Educ., 110 N.C. App. 599, 430 S.E.2d 472 (1993).

Governmental Immunity. — The defendant school board was not entitled to a dismissal of plaintiff's statutory claims under this section via governmental immunity although she requested traditional tort remedies such as damages for emotional distress and future lost wages; governmental immunity is only effective as an affirmative defense against tort claims, and the question of available remedies was not before the court since the defendant failed to cite any authority in support of its argument. Craig v. Asheville City Bd. of Educ., 142 N.C. App. 518, 543 S.E.2d 186, 2001 N.C. App. LEXIS 145 (2001).

VIII. RESIGNATION.

Right to Resign. — A public school teacher can resign whenever he sees fit, though not necessarily with impunity, and his superintendent has the authority to accept his resignation. Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986).

Board's Approval of Resignation. — When plaintiff resigned his position as principal of high school and superintendent accepted it, it was final; the subsequent approval of the resignation by the county board of education was a gratuitous, meaningless formality. Warren v. Buncombe County Bd. of Educ., 80 N.C. App. 656, 343 S.E.2d 225 (1986).

OPINIONS OF ATTORNEY GENERAL

As to applicability of former corresponding section, see opinion of Attorney General to Mr. William A. Dees, Jr., 41 N.C.A.G. 845 (1972).

Personnel File Must Contain Certain Items But Is Not Limited in What It May Contain. — See opinion of Attorney General to Mr. William A. Dees, 41 N.C.A.G. 782 (1972).

Career Status of School Psychologists And Speech Pathologists. — Neither Section 110 of the 1990 Current Appropriations Act, 1989 N.C. Sess. Laws ch. 1066 nor Section 28.14(d) of the 1996 Current Appropriations Act, 1996 N.C. Sess Laws ch. 18 (1996 Second Extra Session) had the effect, or were intended by the General Assembly to have the effect, of making either school psychologists or speech pathologists ineligible for career status. See opinion of Attorney General to Mr. Jim Deni, Vice-Chair Watauga County Board of Education, 1997 N.C.A.G. 53 (8/21/97).

Evidentiary Scope of A School Board Hearing. — If a career employee chooses to bypass the case manager hearing, the record before the board in a hearing pursuant to subdivision (j2)(3) of this section must include the superintendent's recommendation and grounds for the recommendation as defined in subdivision (h)(2) of this section, documentary evidence submitted by the superintendent and the employee, the parties' briefs on the law and evidence in the record, and oral arguments. The career employee waives his right to present nondocumentary evidence unless the board exercises its discretion under G.S. G.S. 115C-45 to subpoena additional evidence or testimony that might aid in its decision. See opinion of Attorney General to Mr. L. P. Hornthal, Jr. Hornthal, Riley, Ellis & Maland, LLP, 1997 N.C.A.G. 69 (12/5/97).

§ 115C-326: Repealed by Session Laws 1998-5, s. 3, effective June 9, 1998.

§ 115C-326.1: Repealed by Session Laws 1985, c. 479, s. 52.

Part 3A. Job Sharing by School Employees.

§ 115C-326.5. Job sharing by school employees.

(a) The General Assembly finds that there is a shortage of qualified public school employees available in certain geographical areas of the State. The elimination of administrative and fiscal limitations on job-sharing arrangements would make employment in a public school an attractive option for well-qualified persons who do not wish to work full time.

(b) A "school employee in a job-sharing position" is a person who is employed by a local board of education as a public school employee for at least fifty percent (50%) of the applicable workweek, as defined by that local board of education.

(c) The State Board of Education shall adopt rules to facilitate job sharing by public school employees. These rules shall provide that an employee in a job-sharing position shall receive paid legal holidays, annual vacation leave, sick leave, and personal leave on a pro rata basis. Such an employee shall also receive service credit under the Teachers' and State Employees' Retirement System as provided in G.S. 135-4(b) and insurance benefits as provided in Article 3 of Chapter 135 of the General Statutes. (2003-358, s. 2.)

Editor's Note. — Session Laws 2003-358, s. 5, provides: "Nothing in this act shall be construed to require local school administrative units to place part-time employees in job-sharing positions or to hire employees in job-sharing positions."

Part 4. Personnel Administration Commission for Public School Employees.

§§ 115C-327 through 115C-329: Repealed by Session Laws 1997-18, s. 10.

Part 5. Employment of Handicapped.

§ 115C-330. Employment of handicapped.

The Board and each local educational agency shall make positive efforts to employ and advance in employment qualified handicapped individuals. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-331: Reserved for future codification purposes.

Part 6. Criminal History Checks.

§ 115C-332. School personnel criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;

Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:
  a. Employee of a local board of education whether full-time or part-time, or
  b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the applicant or employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The local board may delegate any of the duties in this subsection to the superintendent.

(e) The local board of education, or the superintendent if designated by the local board of education, shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor. (1995, c. 373, s. 1; 2001-376, s. 1.)

§ 115C-332.1. Sex offender registries checks for certain contractual personnel.

(a) For purposes of this section, the term "contractual personnel" includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job. For purposes of this section, the term "contractual personnel" does not include any person covered under G.S. 115C-332.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students. (2008-117, s. 21.)

Editor's Note. — Session Laws 2008-117, s. 22, made this section effective December 1, 2008, and applicable to offenses committed on or after that date.

Session Laws 2008-117, s. 21.1 is a severability clause.

Part 7. Personnel Evaluations.

§ 115C-333. Evaluation of certified employees including certain superintendents; action plans; State board notification upon dismissal of employees.

(a) Annual Evaluations; Low-Performing Schools. — Local school administrative units shall evaluate at least once each year all certified employees assigned to a school that has been identified as low-performing, but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal, the assistant principal who supervises the teacher, or an assessment team assigned under G.S. 115C-334 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

Notwithstanding this subsection or any other law, all teachers who have not attained career status shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. Local boards also may adopt rules requiring the annual evaluation of noncertified employees. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Action Plans. —

(1) If a certified employee in a low-performing school receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the local board that the employee be dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. Action plans shall be developed by the person who evaluated the employee or the employee's supervisor unless the evaluation was conducted by an assistance team or an assessment team. If the evaluation was conducted by an assistance team or an assessment team, that team shall develop the action plan in collaboration with the employee's

supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating certified employees and developing effective action plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of action plans or professional development plans for employees who do not require action plans under this section.

(2) Local boards shall adopt policies to require action plans for all certified employees who receive a below standard or unsatisfactory rating on an evaluation in the event the superintendent does not recommend dismissal, demotion, or nonrenewal.

(c) Reevaluation. — Upon completion of an action plan under subdivision (1) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the superintendent shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. — If a local board dismisses an employee for any reason except a reduction in force under G.S. 115C-325(e)(1)l. it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop an action plan to assist the employee, and submit the plan to the State Board. The State Board shall review the action plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives an unsatisfactory or below standard rating on any function that is related to the employee's instructional duties, the local board shall notify the State Board and the State Board shall revoke the employee's certificate under G.S. 115C-296(d). If on the next evaluation the employee receives at least a satisfactory rating on all the functions related to the employee's instructional duties, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under G.S. 115C-325 except for a reduction in force.

(e) Civil Immunity. — There shall be no liability for negligence on the part of the State Board of Education or a local board of education, or their employees, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(f) Local Board Evaluation of Certain Superintendents. — Each year the local board of education shall evaluate the superintendent employed by the local school administrative unit and report to the State Board the results of that evaluation if during that year the State Board designated as low-performing:

(1) One or more schools in a local school administrative unit that has no more than 10 schools.

(2) Two or more schools in a local school administrative unit that has no more than 20 schools.
(3) Three or more schools in a local school administrative unit that has more than 20 schools. (1998-5, s. 4; 1998-220, ss. 14, 15.)

§ 115C-334. Assessment teams.

The State Board shall develop guidelines for local boards to use to create assessment teams. A local board shall assign an assessment team to every low-performing school in the local school administrative unit that has not received an assistance team. Local boards shall ensure that assessment team members are trained in the proper administration of the employee evaluation used by the local school administrative unit. If service on an assessment team is an additional duty for an employee of a local board, the board may pay the employee for that additional work.

Assessment teams shall have the following duties:
(1) Conduct evaluations of certified employees in low-performing schools;
(2) Provide technical assistance and training to principals, assistant principals, superintendents, and superintendents' designees who conduct evaluations of certified employees;
(3) Develop action plans for certified employees; and
(4) Assist principals, assistant principals, superintendents, and superintendents' designees in the development and implementation of action plans. (1998-5, s. 4.)

§ 115C-335. Development of performance standards and criteria for certified employees; training and remediation programs.

(a) Development of Performance Standards. — The State Board, in consultation with local boards of education, shall revise and develop uniform performance standards and criteria to be used in evaluating certified public school employees, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The State Board shall develop rules regarding the use of these standards and criteria. The State Board also shall develop guidelines for evaluating superintendents. The guidelines shall include criteria for evaluating a superintendent's effectiveness in providing safe schools and enforcing student discipline.

(b) Training. — The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of appropriate action plans, the process for contract nonrenewal, and the dismissal process under G.S. 115C-325. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for certified public school employees that may be included in an action plan created under G.S. 115C-333(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units. (1998-5, s. 4.)

§§ 115C-335.1 through 115C-335.4: Reserved for future codification purposes.

Part 8. Sexual Harassment Policies.

§ 115C-335.5. Policies addressing harassment of school employees; protection against retaliation for reporting harassment.

(a) Each local board of education may adopt a policy addressing the sexual harassment of local board employees by students, other local board employees, or school board members. The policy may, at a minimum, set out (i) the consequences of sexually harassing school employees and (ii) a procedure for reporting incidents of sexual harassment.

(b) No local board of education or employee of a local board shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee files a written complaint alleging sexual harassment by students, other local board employees, or school board members, unless the employee reporting the harassment knew or should have known the report was false. (1999-352, s. 1; 2001-173, s. 1.)

Editor's Note. — This section was enacted as G.S. 115C-335 and was redesignated as G.S. 115C-335.5, under Part 8 of Article 22, at the direction of the Revisor of Statutes.

CASE NOTES

Actionable Sexual Harassment. — Given inter alia, the provisions of G.S. 143-422.2, 115C-335.5, 115C-325, 14-395.1, there was no question that the right to be free of sexual harassment in the workplace was implicated in declaration of North Carolina's public policy. Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151, 2004 N.C. App. LEXIS 1160 (2004), cert. denied, 359 N.C. 75, 605 S.E.2d 151 (2004).

Cited in Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151, 2004 N.C. App. LEXIS 1160 (2004).

ARTICLE 23.

Employment Benefits.

§ 115C-336. Sick leave.

(a) All public school employees shall be permitted a minimum of five days per school term of sick leave, pursuant to rules and regulations promulgated by the State Board of Education as provided in G.S. 115C-12(8).

(b) The State Board of Education shall adopt rules and regulations for the establishment of voluntary sick leave banks by local boards of education, from which an employee, upon exhaustion of accumulated sick leave and annual leave, when allowable, may withdraw sick leave days in the event of emergency or catastrophic illness. These rules may include, but not be limited to, (i) requirements of minimum service and minimum balance of sick leave before an employee may join the sick leave bank, (ii) enrollment periods for present employees and new hires, (iii) time limits for rejoining the sick leave bank, (iv) limitation on number of days which can be withdrawn by any employee, (v) waiting period before being eligible to withdraw sick leave, (vi) exclusion of illness or injury covered by Workers' Compensation Benefits, (vii) certification by physician attesting to member's illness or accident, (viii) administration of each sick leave bank by a Sick Leave Bank Committee to be made up of representatives of different classifications of employees, and (ix) other requirements to prevent any adverse selection by employees. The rules concerning the establishment of sick leave banks shall include provisions for notifying employees who donate sick leave to and employees who withdraw sick leave from the sick leave bank, of the State retirement credit consequences as to the donated sick leave.

(c) The State Board of Education shall also adopt rules and regulations to authorize an employee who requires a substitute to use annual leave on days that students are in attendance if the employee has exhausted all of the employee's sick leave and if the employee's absence is due to the catastrophic illness of the employee. The employee shall not be required to pay the substitute.

(d) The State Board of Education shall adopt rules relating to the reinstatement of unused sick leave when an employee who was employed on a 10-month contract at the time of separation returns to employment on a 10-month contract. Under these rules, the maximum period of separation after which unused sick leave is reinstated shall be three calendar months longer for school personnel employed on a 10-month contract than for school personnel employed on a 12-month contract. (1981, c. 423, s. 1; 1993, c. 321, s. 72(a); 1995, c. 324, s. 17.4; 2009-144, s. 1.)

Effect of Amendments. — Session Laws 2009-144, s. 1, effective July 1, 2009, added subsection (d).

§ 115C-336.1. Parental leave.

A school employee may use annual leave or leave without pay to care for a newborn child or for a child placed with the employee for adoption or foster care. A school employee may also use up to 30 days of sick leave to care for a child placed with the employee for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the school employee and the local board of education agree otherwise. (2002-159, s. 37.5(b).)

§ 115C-337. Workers' compensation for school employees.

(a) Workers' Compensation Act Applicable to School Employees. — The provisions of the Workers' Compensation Act shall be applicable to all school employees, and the State Board of Education shall make arrangements necessary to carry out the provisions of the Workers' Compensation Act applicable to these employees paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state-operated school term. The State shall be liable for this compensation on the basis of the average weekly wage of the employees as defined in the Workers' Compensation Act, to the extent of the proportionate part of each employee's salary that is paid from State funds. The State shall also be liable for workers' compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of these employees, to the extent of the proportionate part of each employee's salary that is paid from State funds. The local school administrative units shall be liable for workers' compensation for school employees, including lunchroom employees, whose salaries or wages are paid by the local units from local or special funds. The local units may provide insurance to cover this compensation liability and to include the cost of this insurance in their annual budgets.

The provisions of this subsection shall not apply to any person, firm, or corporation making voluntary contributions to schools for any purpose, and the person, firm, or corporation shall not be liable for the payment of any sum of money under this Chapter.

(b) Payment of Awards to School Bus Drivers Pursuant to the Workers' Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workers' Compensation Act against any local board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the local board of education shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the school term. It shall be the duty of the local board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workers' Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the local board of education, the local school administrative unit, nor the tax levying authorities for the local school administrative unit shall be liable for the payment of any award made pursuant to the provisions of this subsection in excess of the amount paid upon such requisition by the State Board of Education, nor shall the local school board of education, the local school administrative unit, nor the said tax levying authorities be required to provide or carry workers' compensation insurance for such purpose. (1955, c. 1292; c. 1372, art. 18, s. 9; 1979, c. 714, s. 2; 1981, c. 423, s. 1; 1995, c. 324, s. 17(b).)

Cross References. — As to school bus drivers, see G.S. 115C-256.

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 115 and earlier provisions.*

The expression "arising out of and in the course of their employment" carries the same meaning and calls for the same interpretation and application as does the similar expression appearing in G.S. 97-2(6) of the Workers' Compensation Act. Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Murder of high school principal by student held not to arise out of school employment. Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Janitor Injured During Employment by Municipal Board. — Findings supported the conclusion of law that a janitor was injured during his employment by the municipal board of education and that the municipal board and its carrier were solely liable for compensation for his injury. Casey v. Board of Educ., 219 N.C. 739, 14 S.E.2d 853 (1941).

§ 115C-338. Salaries for employees injured during an episode of violence.

(a) For the purpose of this section, "employee" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1. In all cases of doubt, the Board of Trustees, as defined in G.S. 135-1(7), shall determine whether any person is a teacher as herein defined.

(b) Any employee who while engaged in the course of his employment or in any activities incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, the continuation of his disability, or the time during which he is unable to engage in his employment because of injury. An episode of violence shall be defined to mean but shall not be limited to any acts of violence directed toward any school building or facility, or to any employee or any student by any person including but not limited to another student. These benefits shall be in lieu of all other income or disability benefits payable under workers' compensation to such employee only during the period prescribed herein. Thereafter, such teacher shall be paid such income or disability payments to which he might be entitled under workers' compensation. If the employment of a substitute is necessitated by the disability of the injured employee the salary of such substitute shall be paid from the same source of funds from which the employee is paid. This section shall in no way limit the right of the injured employee to receive the benefits of medical, hospital, drug and related expense payments from any source, including workers' compensation: Provided, further, that this section shall not apply to any employee who is injured while he participates in or provokes such episode of violence except as is incident to the maintenance or restoration of order or classroom discipline or to defend himself: Provided, further, that this section shall be given liberal construction and interpretation as to any and all definitions, conditions, and factual circumstances set forth herein.

(c) Any employee claiming the benefits of this section shall file claim with the board of education employing such employee within one year after the occurrence giving rise to his alleged injury. That board of education shall, within 30 days after receipt of such claim, decide whether and to what extent that employee is entitled to the benefits of this section and shall forthwith transmit its decision in writing to such employee. That employee shall, however, have the right to appeal the decision of that board of education to the North Carolina Industrial Commission by serving that board of education and the North Carolina Industrial Commission with written notice thereof within 30 days after receipt of the board's written decision. In determining all appeals under this section the North Carolina Industrial Commission shall constitute a court for the purpose of hearing de novo and passing upon all claims thereby presented in accordance with procedures utilized by the Commission in determining claims under the Workers' Compensation Act. The decision of the

Industrial Commission in each instance shall be subject to appeal to the North Carolina Court of Appeals as provided in G.S. 143-293 and 143-294. (1971, c. 640, ss. 1, 2; 1973, c. 753; 1979, c. 714, s. 2; 1981, c. 423, s. 1.)

§ 115C-339. Retirement plan.

Provisions for retirement plans for public school employees may be found in Chapter 135 of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-340. Health insurance.

(a) The State Board of Education may authorize and empower any local board of education, the board of trustees of any community college, or other governing authority, within the State, to establish a voluntary payroll deduction plan for premiums for any type of group insurance, including health insurance, established and authorized by the laws of this State.

(b) Any employee of any local board of education, any community college, or of any educational association, may enter into a written agreement with his employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section. (1969, c. 591; 1981, c. 423, s. 1; 1987, c. 564, ss. 12, 16.)

§ 115C-341. Annuity contracts.

Notwithstanding the provisions of this Chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, local boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The local board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the local boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall be included in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees. (1963, c. 582; 1981, c. 423, s. 1; 1989, c. 526, s. 1.)

§ 115C-341.1. Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of local boards of education, the State Board of Education is authorized to provide a plan of flexible compensation to eligible employees of local school administrative units for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize local school administrative units to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 14(f); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

§ 115C-342. Group insurance and credit unions.

(a) The State Board of Education may authorize and empower any local board of education, the board of trustees of any community college, or other governing authority, within the State, to establish a voluntary payroll deduction plan for:

(1) Premiums for any type of group insurance established and authorized by the laws of this State.

(2) Amounts authorized by members of the State Employees' Credit Union or any local teachers' credit unions to be deposited with such organizations.

(3) Loans made to teachers by credit unions.

(b) Any employee of any local board of education, any community college, or of any educational association, may enter into a written agreement with his employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section.

(c) Any public school teacher who is a member of a credit union organized and established under Chapter 54 of the General Statutes may, by executing a written consent to the local school administrative unit by whom employed, authorize periodical payment or obligation to such credit union to be deducted from their salaries or wages, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable. (1969, c. 591; 1981, c. 423, s. 1; 1987, c. 564, ss. 12, 16.)

§ 115C-343. Payroll savings plan for purchase of United States bonds.

(a) The State Board of Education may authorize any local school administrative school unit within the State to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by the employees of such local school administrative unit, and to set up the necessary machinery for carrying out the purposes of this section.

(b) Any employee of any local school administrative school unit within the State may enter into a written agreement with the local board of education by which he is employed and which has adopted such payroll savings plan to authorize deductions from his salary of certain designated sums to be invested in United States Savings Bonds of the kind and type specified in such agreement.

(c) Upon execution of such agreement by an employee of any local school administrative unit the local board of education employing such person is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in which withholding tax and retirement are shown. Such sums shall be deposited monthly with a depository authorized by the United States Treasury Department. The sums so deposited shall be held by the depository until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sums shall be invested in United States Savings Bonds for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practicable: Provided, that no coercion shall be exercised to require any person to participate in such plan.

(d) Such agreement may be canceled by the employee executing the same by giving written notice to the superintendent of schools who is ex officio secretary to the local board of education, not later than the fifteenth day of the month in which he desires such agreement to be terminated; and the local board of education may cancel any agreement herein provided for upon giving 10 days written notice to the affected employee. Upon the termination of the agreement, the depository is hereby authorized and directed to refund any amount of money held for such employee. (1957, c. 751, ss. 1-4; 1981, c. 423, s. 1.)

§§ 115C-344 through 115C-348: Reserved for future codification purposes.

ARTICLE 24.

Interstate Agreement on Qualifications of Educational Personnel.

§ 115C-349. Purpose, findings, and policy.

(a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-350. Definitions.

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Accept" or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(4) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools, is acceptable in accordance with the terms of a contract made pursuant to G.S. 115C-351.

(5) "Receiving state" means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to G.S. 115C-351.

(6) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-351. Interstate educational personnel contracts.

(a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this section only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:

(1) Its duration.

(2) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(3) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(4) Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-352. Approved and accepted programs.

(a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-353. Interstate cooperation.

The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to G.S. 115C-351 of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-354. Agreement evaluation.

The designated state officials of any party state(s) may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-355. Other arrangements.

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-356. Effect and withdrawal.

(a) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-357. Construction and severability.

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-358. Designated state official.

For the purposes of the agreement set forth in this Article the "designated state official" for this State shall be the Superintendent of Public Instruction. He shall enter into contracts pursuant to G.S. 115C-351 only with the approval of the specific text thereof by the State Board of Education. (1969, c. 631, s. 2; 1981, c. 423, s. 1.)

§§ 115C-359 through 115C-361: Reserved for future codification purposes.

ARTICLE 24A.

Certified Personnel Evaluation Pilot Program.

§ 115C-362: Repealed by Session Laws 1989, c. 500, s. 12.

ARTICLE 24B.

Career Development Pilot Program.

§§ 115C-363 through 115C-363.14: Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 75.1(j).

Editor's Note. — Section 115C-363.10 was previously repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 103(a).

Sections 115C-363.12 through 115C-363.14 had been reserved for future codification purposes.

ARTICLE 24C.

Teacher Enhancement Program.

Part 1. Office of Teacher Recruitment.

§§ 115C-363.15 through 115C-363.21: Repealed by Session Laws 1993, c. 321, s. 128.

Part 2. North Carolina Teaching Fellows Commission.

§ 115C-363.22. North Carolina Teaching Fellows Commission established.

There is established the North Carolina Teaching Fellows Commission. This Commission shall exercise its powers and functions independently of the State Board of Education and the Department of Public Instruction. The Public School Forum of North Carolina, Inc., shall provide staff and office space to the Commission. Staff to the Commission are not State employees. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a).)

§ 115C-363.23. Membership.

(a) The Commission shall consist of 11 nonlegislative members as follows:

(1) The Chairman of the State Board of Education, or his designee;

(2) The Lieutenant Governor, or his designee;

(3) Three persons appointed by the Governor;

(4) Three persons appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121; and

(5) Three persons appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

Terms of commission members appointed under this section expire on June 30 of the year of expiration. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, one for a term to expire June 30, 1991, one for a term to expire June 30, 1992, and one for a term to expire June 30, 1993. In 1990, three members shall be appointed by the Governor, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. Subsequent appointments are for a term of four years.

(b) Each of the appointing entities shall seek to achieve a balanced membership representing, to the maximum extent possible, the State as a whole. The Commission members shall be chosen from among individuals who have demonstrated a commitment to education.

(c) Commission members shall be appointed for four-year terms, with the first appointments to expire July 1, 1990.

(d) In the event a vacancy occurs for any reason, the vacancy shall be filled by appointment by the entity that made the appointment, except that vacancies in appointments by the General Assembly shall be filled under G.S.

120-122. The new appointee shall serve for the remainder of the unexpired term.

(e) The Lieutenant Governor or his designee shall serve as chairman.

(f) Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with Chapter 138 of the General Statutes.

(g) The Commission shall meet regularly at times and places the chairman deems necessary. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a); 1989 (Reg. Sess., 1990), c. 1038, s. 19; 1995, c. 490, s. 58.)

§ 115C-363.23A. Teaching Fellows Program established; administration.

(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them.

(b) The Commission shall administer the program in cooperation with teacher training institutions selected by the Commission. Teaching Fellows should be exposed to a range of extra-curricular activities while in college. These activities should be geared to instilling a strong motivation not only to remain in teaching but to provide leadership for tomorrow's schools.

(c) The Commission shall form regional review committees to assist it in identifying the best high school seniors for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in teaching to enter the program.

(d) All scholarship loans shall be evidenced by notes made payable to the Commission that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Commission.

(e) The Commission shall forgive the loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive the loan if, within seven years after graduation, the recipient teaches for three consecutive years, unless the recipient takes an approved leave of absence, at a North Carolina public school in a local school administrative unit that, at the time the recipient accepts employment with the unit, is a low-performing school system identified in accordance with Article 6A of this Chapter or is on warning status as defined by the State Board of Education. The Commission shall also forgive the loan if it finds that it is impossible for the recipient to teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient.

(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

The Public School Forum, as administrator for the Teaching Fellows Program, may use up to eight hundred ten thousand dollars ($810,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program.

(g) The State Education Assistance Authority is responsible for the collection of a loan awarded under this section if the loan repayment is outstanding for more than 30 days. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a); 1989 (Reg. Sess., 1990), c. 1066, s. 101(a), (b); 1991 (Reg. Sess., 1992), c. 1030, s. 29; 1993, c. 330, s. 1; 1998-212, s. 9.19(a); 1999-237, s. 8.12; 2002-126, ss. 9.2(c), (d); 2006-66, s. 7.19(a); 2007-323, s. 7.25(a).)

Editor's Note. — Session Laws 2002-126, s. 9.2(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina Teaching Fellows Commission relating to the collection of loans awarded under G.S. 115C-363.23A when the loan repayments are outstanding for more than 30 days are transferred from the North Carolina Teaching Fellows Commission to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§ 115C-363.24: Repealed by Session Laws 1989, c. 500, s. 15.

§§ 115C-363.25 through 115C-363.27: Reserved for future codification purposes.

Article 24D.

Lead Teacher Pilot Program.

§ 115C-363.28: Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 75.1(k).

SUBCHAPTER VI. STUDENTS.

Article 25.

Admission and Assignment of Students.

§ 115C-364. Admission requirements.

(a) A child who is presented for enrollment at any time during the first 120 days of a school year is entitled to initial entry into the public schools if:

(1) The child reaches or reached the age of 5 on or before August 31 of that school year; or

(2) The child did not reach the age of 5 on or before August 31 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before the child moved to and became a resident of North Carolina.

(b) A local board may allow a child who is presented for enrollment at any time after the first 120 days of a school year to be eligible for initial entry into the public schools if:

(1) The child reached the age of 5 on or before August 31 of that school year; or

(2) The child did not reach the age of 5 on or before August 31 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before the child moved to and became a resident of North Carolina.

(c) The initial point of entry into the public school system shall be at the kindergarten level. If the principal of a school finds as fact subsequent to initial entry that a child, by reason of maturity can be more appropriately served in the first grade rather than in kindergarten, the principal may act under G.S. 115C-288 to implement this educational decision without regard to chronological age. The principal of any public school may require the parent or guardian of any child presented for admission for the first time to that school to furnish a certified copy of the child's birth certificate, which shall be furnished by the register of deeds of the county having on file the record of the birth of the child, or other satisfactory evidence of date of birth.

(d) A child who has passed the fourth anniversary of the child's birth on or before April 16 may enter kindergarten if the child is presented for enrollment no later than the end of the first month of the school year and if the principal of the school finds, based on information submitted by the child's parent or guardian, that the child is gifted and that the child has the maturity to justify admission to the school. The State Board of Education shall establish guidelines for the principal to use in making this finding. (1955, c. 1372, art. 19, s. 2; 1969, c. 1213, s. 4; 1973, c. 603, s. 3; 1981, c. 423, s. 1; 1983, c. 656, s. 1; 1997-204, s. 1; 1997-269, s. 1; 2007-173, s. 1.)

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

Effect of Amendments. — Session Laws 2007-173, s. 1, effective July 4, 2007, and applicable beginning with the 2009-2010 school year, substituted "August 31" for "October 16" in subdivisions (a)(1), (a)(2), (b)(1), and (b)(2).

OPINIONS OF ATTORNEY GENERAL

Age Requirements For Entry Into Public School. — Unless a child qualifies for one of the two exceptions set out in this section, a principal has no discretion with regard to the age at which a child may initially enroll in public school — by statute a child must have reached age 5 on or before October 16 of the kindergarten year; however, once a child is old enough to enroll in public school, his or her grade placement in the initial year or any subsequent years is governed by G.S. 115C-288(a) which gives the principal the discretion to place a child in any appropriate grade. See opinion of Attorney General to Mr. T. Brooks Skinner, Jr., General Counsel, North Carolina Department of Administration, 2003 N.C.A.G. 12 (9/16/03) (decided prior to 2007 amendment, which changed the date to August 31 beginning with the 2009-2010 school year).

§ **115C-365:** Repealed by Session Laws 1991, c. 719, s. 1.

§ 115C-366. Assignment of student to a particular school.

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents are considered legal residents of the local school administrative unit in which the institution is located. These children are eligible for admission to the public schools of the local school administrative unit as provided in this section.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth has access to a free, appropriate public education. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. A local board of education shall not charge a homeless child or youth tuition for enrollment. An unaccompanied youth or a homeless child's or youth's parent, guardian, or legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review.

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of any one of the following:
  a. The death, serious illness, or incarceration of a parent or legal guardian,
  b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
  c. Abuse or neglect by the parent or legal guardian,
  d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student,
  e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health,
  f. The loss or uninhabitability of the student's home as the result of a natural disaster, or
  g. The parent or legal guardian is one of the following:
    (1) On active military duty and is deployed out of the local school administrative unit in which the student resides;
    (2) A member or veteran of the uniformed services who is severely injured and medically discharged or retired, but only for a period of one year after the medical discharge or retirement of the parent or guardian; or

(3) A member of the uniformed services who dies on active duty or as a result of injuries sustained on active duty, but only for a period of one year after death.

For purposes of this sub-subdivision, the term "active duty" does not include periods of active duty for training for less than 30 days. Assignment under this sub-subdivision is only available if some evidence of the deployment is tendered with the affidavits required under subdivision (3) of this subsection.

(2) The student is:

a. Not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit, or

b. Currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit and is identified as eligible for special education and related services under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004). Assignment under this sub-subdivision is available only if evidence of current eligibility is tendered with the affidavit required under subdivision (3) of this subsection.

(3) The caregiver adult and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:

a. Confirm the qualifications set out in this subsection establishing the student's residency,

b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and

c. Attest that the caregiver adult has been given and accepts responsibility for educational decisions for the student.

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d). When a student who has been identified as eligible to receive special education and related services under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), is denied admission under this subsection, the local board shall provide educational services to the student to the same extent it would if the student were enrolled in the local school administrative unit at the time of the suspension or expulsion, as required by G.S. 115C-107.1(a)(3).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment under this Article as long as the address is kept confidential from the public under Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. — A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect, and that definition also shall apply to this section.

(2) Caregiver adult. — The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.

(3) Educational decisions. — Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.

(4) Facility. — A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).

(5) Homeless. — Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(6) Legal custodian. — The person or agency that has been awarded legal custody of the student by a court.

(7) Licensed facility. — A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.

(8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. — 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.

(9) Program participant. — An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.

(10) Unaccompanied youth. — Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. (1955, c. 366, s. 1; c. 1372, art. 19, s. 3; 1956, Ex. Sess., c. 7, s. 1; 1971, c. 153; 1981, c. 423, s. 1; c. 567, s. 1; 1991, c. 407, s. 1; c. 719, s. 2; 1997-271, s. 1; 1997-443, s. 8.29(d); 2002-171, s. 5; 2006-65, s. 1; 2007-283, s. 1; 2008-185, s. 2; 2008-187, s. 19; 2009-331, ss. 1, 2.)

Cross References. — As to effect of consolidation of districts or discontinuance of schools, see G.S. 115C-72. As to eligibility for admission to summer school, see G.S. 115C-233.

Editor's Note. — A bracketed "[or]" was inserted at the end of subdivision (a3)(1)f at the direction of the Revisor of Statutes. The amendments to this section by Session Laws 2008-187, s. 19, corrected the oversight, and the bracketed language has been removed.

Effect of Amendments. — Session Laws 2008-185, s. 2, effective August 7, 2008, rewrote subdivision (a3)(1)g.

Session Laws 2008-187, s. 19, effective August 7, 2008, made minor stylistic changes to subdivision (a3)(1)e and (a3)(1)f.

Session Laws 2009-331, ss. 1 and 2, effective July 24, 2009, added subdivision (a3)(2)b, and made related changes, and added the last sentence in subsection (a5).

Legal Periodicals. — For comment on former Article 21 of Chapter 115, relating to assignment and enrollment of pupils, see 33 N.C.L. Rev. 552 (1955).

For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115.*

History of Pupil Enrollment Act. — See In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

As to the constitutionality of this section, see Harris v. Hall, 572 F. Supp. 1054 (E.D.N.C. 1983).

Domicile Requirement Not Unconstitutional. — The defendants' enrollment policy, effectively denying the plaintiff's daughter access to the school system based on the domiciled requirement of this section, did not violate her due process and equal protection rights. Graham v. Mock, 143 N.C. App. 315, 545 S.E.2d 263, 2001 N.C. App. LEXIS 275 (2001), appeal dismissed, review denied, 353 N.C. 726, 551 S.E.2d 776 (2001).

Constitutionality of Former Statute. — The standards set forth in former G.S. 115-177 as it stood before the 1956 amendment thereto, which standards were the same as those set forth in the next to the last sentence of subsection (b) of this section, were not on their face insufficient to sustain the exercise of the administrative power conferred. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), cert. denied, 353 U.S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957).

Although the North Carolina Assignment and Enrollment of Pupils Act was declared facially constitutional, use of such a statute to discriminate against black pupils would be an unconstitutional application. Criteria may not be used to screen and deny black applicants to a particular school if they are not used in the same manner to screen and deny white applicants similarly situated. Felder v. Harnett County Bd. of Educ., 349 F.2d 366 (4th Cir. 1965).

Construed with former § 115C-110. — When a more generally applicable statute such as this section conflicts with a more specific, special statute such as former G.S. 115C-110(i) (repealed), the special statute is viewed as an exception to the provisions of the general statute. Accordingly, the specific requirements of G.S. 115-110(i) control where they are in conflict with the general requirements of subsection (a) of this section. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Authority for Assignment and Enrollment of Pupils Is Vested Solely in Local Boards. — While State officials are given broad general powers over the public school system, specific authority for the assignment and enrollment of pupils in all city and county administrative units throughout the State is vested solely in county and city boards of education. There is no provision giving State officials any authority or control whatever over local school officials relating to the enrollment and assignment of pupils in the public schools. Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The duty to recognize the constitutional rights of pupils rests primarily upon the school board, and there it should be placed by an appropriate order of the court, for the United States district court has a secondary duty of enforcement of individual rights and of supervision of the steps taken by the school board to bring itself within the requirements of the law. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

State Board No Longer Has Authority to Assign Children from One Unit to Another. — By virtue of the comprehensive rewriting of former Chapter 115 by Session Laws 1955, c. 1372, the State Board no longer has the authority formerly vested in it to assign children from one administrative unit or district to another for the school term. In re Assignment of School Children, 242 N.C. 500, 87 S.E.2d 911 (1955).

Power of Local Boards Is Subject Only to Standards and Limitations of Statute. — The State has entrusted to the county and city boards of education the "full and complete" power to assign and reassign each child residing within its unit to a public school, subject only to the standards and limitations prescribed by the Pupil Assignment Law, including the power of the courts of North Carolina to hear de novo an appeal from the final order of the board and, thereupon, to enter the appropriate order. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

County Board of Education could not require the payment of an exit tuition fee as a condition to approving the transfer of a county resident student to a school system in a different county, as the exit tuition fee is not provided for by the constitution and statutes of this State. Streeter v. Greene County Bd. of Educ., 115 N.C. App. 452, 446 S.E.2d 107 (1994).

And Board May Not Delegate Its Duty. — The Pupil Assignment Law does not authorize the school board to abdicate or delegate its duty to exercise the power so entrusted to it for the best interests of the applying child. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The school board is endowed with "full and complete" and "final" authority to assign students to whatever schools the board chooses to assign them. The board may not shift this statutory burden to others. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969), reh'g den., 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 689 (1971).

Hence, Board May Not Transfer Its Power to Federal Employee. — The school board may not, in the hope of receiving money for its school, shut its eyes to the mandate of the statute. It may not, by contract or otherwise, transfer its power to an employee of the federal government, or bind itself to exercise it as he may direct, or in any other manner than that provided by statute, or for any purpose other than that for which the State conferred the power upon it. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the local school board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution. It is the court's duty to assess any pupil assignment plan in terms of the Constitution, which is the supreme law of the land. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

De jure segregation was outlawed by the decisions of the United States Supreme Court in Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180 (1954) and 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955); Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Assignments on a racial basis are neither authorized nor contemplated by the permissive Pupil Enrollment Act. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

And Such Assignments Are Unconstitutional. — It is an unconstitutional administration of the North Carolina Pupil Enrollment Act to assign pupils to schools according to racial factors. Wheeler v. Durham City Bd. of Educ., 309 F.2d 630 (4th Cir. 1962).

"Freedom of Choice". — In desegregating a racially dual school system a plan utilizing "freedom of choice" is not an end in itself. "Freedom of choice" is not a sacred talisman; it is only a means to a constitutionally required end — the abolition of the system of segregation and its effects. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

If a voluntary system is to justify its name, it must, at reasonable intervals, offer to the pupils reasonable alternatives, so that, generally, those who wish to do so may attend a school with members of the other race. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

The neighborhood school theory has no standing to override the Constitution. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school theory was repudiated by the 1955 General Assembly and by the Pupil Assignment Act of 1955-56. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school concept never prevented statutory racial segregation; it may not now be validly used to perpetuate segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live — or find they must live — nor on the color of the child's skin. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Where pupils live must not control where they are assigned to school, if some other approach is necessary in order to eliminate racial segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969), reh'g den., 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 689 (1971).

Duty to Desegregate Schools. — School officials have the continuing duty to take whatever action may be necessary to create a unitary, nonracial system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has a duty to promote acceptance of and compliance with the law. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969), reh'g den., 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 689 (1971).

School boards are clearly charged with the affirmative duty to desegregate schools "now" by positive measures. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

School boards operating State-compelled racially dual systems were clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The duty of the local school boards is not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of historical apartheid. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has an affirmative duty to promote faculty desegregation and desegregation of pupils, and to deal with the problem of all-black schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The board must fashion steps which promise realistically to convert promptly to a system without a "white" school and a "black" school, but just schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969), reh'g den., 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 689 (1971).

Desegregation Plan — Burden on School Board. — The burden on a school board is to come forward with a school desegregation plan that promises realistically to work, and promises realistically to work now. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same — Purpose. — The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about by a school desegregation plan. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same — Methods of Desegregation. — In developing a desegregation plan, the school board is free to consider all known ways of desegregation, including bussing; pairing of grades or of schools; enlargement and realignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon de facto segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same — Rezoning. — A school desegregation plan should try to avoid any rezoning which tends to perpetuate segregated pupil assignment. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

As to consideration of factors other than mixture of races in drawing boundaries, see Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Assignment to School Outside Administrative Unit. — Former G.S. 115-176 provided for assignment en masse upon the basis of residence to a school outside the administrative unit if the boards agreed in writing, without notice, or the approval of the child or its parents, and without hearing. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

The legislature contemplated agreements between boards acting within the framework of the statute and free to accomplish its purpose — the assignment of the individual child to the school where his or her "best interest" would be served without disruption of that school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The board of one administrative unit cannot assign a child to a school in another administrative unit without the consent of the board of the other unit. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Under the Pupil Assignment Law, as amended in 1956, the board of education of one city or county administrative unit could not permit to be enrolled in one of its schools a child who resided in the territory of another unit solely upon its own willingness to do so, plus the desire of the child or its parents to attend that school. Nothing else appearing, the assent of the board of the unit in which the child resides had to be obtained. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The requirement that a child residing in one unit may not be placed in school in another unit without the assent of his resident unit's board is a protection to each unit against raids upon its student body by another unit so as to gain additional teacher allotment by the State on account of increased enrollment, or so as to gain accomplished athletes, or for any other purpose. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is not within the fair intendment of this law that a board may enter into an agreement with some other agency or person that, come what may and regardless of the welfare of the applying child, the board will never agree to assign any child to any school in another county. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Assignment of Pupils Outside County of Their Residence. — The assignment by a county board of education of the plaintiffs to schools in another county was without authority and of no effect. Plaintiffs had a legal right to the enjoyment of opportunities in the county of their residence, and the administrative board could not justify requiring their resort to opportunities elsewhere. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

Out-of-County Students. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by former G.S. 115-352, and no new school district was properly formed later; the parents and the students offered no proof of a later agreement nor of approval by the state board of education of any such agreement, and did not show there was a payment of a pro rata share of public school money, as required by the statute if such a school district was officially formed. The school board thus had the authority to charge the contested tuition. Brown v. Chatham County Bd. of Educ., 187 N.C. App. 274, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Tuition for "Out-of-County" Students Not Improper. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by G.S. 115-352, and no new school district was properly formed later; therefore, the school board had the authority to charge the contested tuition to the "out-of-county" students. Brown v. Chatham County Bd. of Educ., 187 N.C. App. 274, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Place of Child's Actual Abode. — Where child's place of actual abode was clearly in county where he lived with his grandmother, he was a legal resident of the county as long as he continued to live there and was thus entitled to a free appropriate education in this county. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

A fourteen-year-old who was sent by her mother to live with her uncle after she had been the victim of an attempted sexual assault in her inner city neighborhood was not entitled to enter the public school system there because she was a resident of another state and did not qualify for any of the exceptions from the requirement of domicile. Graham v. Mock, 143 N.C. App. 315, 545 S.E.2d 263, 2001 N.C. App. LEXIS 275 (2001), appeal dismissed, review denied, 353 N.C. 726, 551 S.E.2d 776 (2001).

Final Decision Subject Only to Application for Reassignment. — No authority existed to support a trial court's requirement of informed parental consent prior to a board of education's assignment of student to year-round schools. Under G.S. 115C-366(b), when a local school board exercised its "full and complete" authority to assign a student to a year-round school, that decision was "final" subject only to an application by the student under G.S. 115C-369 for reassignment. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872

(2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Exhaustion of Administrative Remedies. — The administrative remedy provided for persons who feel that they have not been assigned to the schools that they are entitled to attend must be exhausted before the federal courts will give relief. Carson v. Board of Educ., 227 F.2d 789 (4th Cir. 1955); Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), cert. denied, 353 U.S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958), aff'd, 265 F.2d 95 (4th Cir.), cert. denied, 361 U.S. 818, 80 S. Ct. 59, 4 L. Ed. 2d 63 (1959); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959).

The administrative remedies provided by statute must be exhausted before the courts of the United States will grant injunctive relief, and rights must be asserted as individuals, not as a class or group. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959); Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part, 309 F.2d 621 (4th Cir. 1962).

The federal court is not authorized to act until administrative remedies have been properly sought and it is shown that the statute is being unconstitutionally administered. After the hearing and final decision thereon, if one is not satisfied, and can show that he has been discriminated against because of his race, he may then apply to the federal court for relief. Morrow ex rel. Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

A contention that even if the Assignment and Enrollment of Pupils Act was constitutional it did not have to be complied with in the instant case because the provisions of the act were being unconstitutionally applied was untenable in view of the fact there was no allegation that any of the plaintiffs ever sought to comply with the provisions of the act. Not until each of the plaintiffs had applied to the county board of education as individuals, and not as a class, for reassignment, and had failed to be given the relief sought, should the court be asked to interfere in school administration. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958), aff'd, 264 F.2d 780 (4th Cir. 1959), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959). But see Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Unless Such Remedies Perpetrate Discrimination. — When an administrative remedy respecting school assignments and transfers, however fair upon its face, has, in practice, been employed principally as a means of perpetration of discrimination and of denial of constitutionally protected rights, it is consistently held inadequate. A remedy so administered need not be exhausted or pursued before resort to the courts for enforcement of the protected rights. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Hence, school boards are required to administer the assignment statutes reasonably if pupils are to be required to exhaust their administrative remedies before applying to the courts for relief. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961), rev'd on other grounds, 309 F.2d 630 (4th Cir. 1962).

Assumption That State Officials Will Obey Law. — Until there has been a failure of the administrative process, it should be assumed in a federal court that State officials will obey the law when their official action is properly invoked. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

When, however, administrators have displayed a firm purpose to circumvent the law, when they have consistently employed the administrative processes to frustrate enjoyment of legal rights, there is no longer room for indulgence of an assumption that the administrative proceedings provide an appropriate method by which recognition and enforcement of those rights may be obtained. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Judicial Relief. — For statement of judicial relief to be granted to school children who were initially assigned on a racial basis, see Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

When Class Action in Federal Court Proper. — Where each plaintiff was rejected for the same or similar reasons and each sought in the application the identical relief, having exhausted their administrative remedies they had the right under the law to maintain a class action in the federal courts in behalf of themselves and others likewise qualified. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

State officials are not indispensable and necessary parties to an action to compel desegregation of schools in a county. Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

Members of the State Board of Education and the State Superintendent of Public Instruction are neither necessary nor proper parties in actions involving the assignment and enrollment of pupils. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958), aff'd, 264 F.2d 780 (4th Cir.), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959).

Members of the North Carolina State Board of Education are neither necessary nor proper parties to an action against a city board of education. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

Burden of Proof. — The burden of proof is on the plaintiffs to establish by a preponderance of the evidence that they have exhausted their administrative remedies before applying to the federal courts for injunctive relief. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The burden is upon plaintiffs seeking a transfer to establish by a preponderance of the evidence that they were denied a constitutional right because of their race. Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part, 309 F.2d 621 (4th Cir. 1962).

Injunction. — Board of education was enjoined from applying racial considerations to any applications for reassignment under the North Carolina Pupils Enrollment Act. Chance v. Board of Educ., 224 F. Supp. 472 (E.D.N.C. 1963).

Cited in Ballard v. Weast, 121 N.C. App. 391, 465 S.E.2d 565 (1996).

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

OPINIONS OF ATTORNEY GENERAL

Construction with § 115C-366.1. — Under the rules of statutory construction, this section and G.S. 115C-366.1 must be construed together and the provisions of both must be given effect. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Right to Attend Only Schools of District of Domicile. — Except for certain limited exceptions in former G.S. 115C-140.1 (repealed) and former 115C-366.2 (repealed), principally concerning children in foster or group homes, a student has a right to attend only the schools of the school system within which the student, his parents or legal guardian are domiciled and in which they intend to make their home, permanently or indefinitely. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Refusal to Enroll Students Without Statutory Right to Attend. — Action of a local board of education in refusing to enroll students who do not have a statutory right to attend its schools would not infringe any constitutional rights of students provided such decisions are not based upon discriminatory policies or practices. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Agreement Between Boards to Allow Attendance of Nondomiciled Student. — The only method by which a student domiciled in the State may attend the schools of a school system in which neither he, his parents or guardian is domiciled is, in accordance with subsection (a), through an agreement between the boards involved. Such agreement may provide for the payment of tuition and other reasonable terms and conditions. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Domicile Acquired Immediately upon Move. — Domicile for school attendance usually will be acquired immediately upon moving into a school system with the purpose of making a home permanently or indefinitely in the school system. No "waiting period" is required. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Temporary Move to School System with Intent to Return to Permanent Home. — Domicile for school purposes can be established immediately upon a move to a school system, but a temporary move to a school system with a fixed intention to return to a permanent home will not suffice. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

"Guardian" Not to Be Appointed as Ruse. — The reference in this section to a "guardian" means a guardian appointed for a minor in accordance with the provisions and limitations contained in Chapter 33 (see now Chapter 35A, G.S. 35A-1101 et seq.), and where either parent is living and capable of caring for a child, a guardian, absent unusual circumstances, may not be appointed for the purpose of conferring a right upon a child to attend a school system where the parent is not domiciled. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Conditioning Transfer on Relinquishment of Extracurricular Activities. — Local boards of education which determine that a student should be permitted to transfer from one school system to the other may not condition that transfer upon relinquishment of participation in extracurricular activities, absent some exceptional circumstance. See opinion of Attorney General to Mr. Don W. Viets, Jr., Attorney, Whiteville City School System, 55 N.C.A.G. 11 (1985).

Transfers to Participate in Interscholastic Athletics. — The eligibility of students who transfer from one school system to another to participate in interscholastic athletics is governed by State Board of Education regulations which are made binding upon local boards of education by G.S. 115C-47(4) and cannot be altered by local boards as a part of a transfer agreement. See opinion of Attorney General to

Mr. Don W. Viets, Jr., Attorney, Whiteville City School System, 55 N.C.A.G. 11 (1985).

§ 115C-366.1. Local boards of education; tuition charges.

(a) Local boards of education may charge tuition to the following persons:

(1) Persons of school age who are not domiciliaries of the State.

(2) Persons of school age who are domiciliaries of the State but who do not reside within the school administrative unit or district.

(3) Persons of school age who reside on a military or naval reservation located within the State and who are not domiciliaries of the State. Provided, however, that no person of school age residing on a military or naval reservation located within the State and who attends the public schools within the State may be charged tuition if federal funds designed to compensate for the impact on public schools of military dependent persons of school age are funded by the federal government at not less than fifty percent (50%) of the total per capita cost of education in the State, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school administrative unit.

(4) Persons who are 21 years of age or older before the beginning of the school year in which they wish to enroll.

(b) The tuition charge for a student shall not exceed the amount of per pupil local funding.

(c) The tuition required in this section shall be determined by local boards of education each August 1 prior to the beginning of a new school year. (1981, c. 567, ss. 2-4; 1982, Ex. Sess., c. 2, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 22; 1985, c. 780, s. 2.)

Local Modification. — Cherokee County: 2006, c. 13, s. 1

CASE NOTES

Residence and Domicile Defined. — Residence simply indicates a person's actual place of abode, whether permanent or temporary, while domicile denotes one's permanent, established home as distinguished from a temporary, although actual, place of residence; furthermore, an unemancipated minor may not establish a domicile different from his parents, surviving parents, or legal guardian, but obviously may reside in a place separate from his parents. Chapel Hill-Carrboro City Sch. Sys. v. Chavioux, 116 N.C. App. 131, 446 S.E.2d 612 (1994).

Although the defendant and her daughter were domiciled outside plaintiff's administrative unit, the daughter resided within that unit; therefore, plaintiff may recover nothing from defendant because it is only empowered to charge tuition to students who do not reside within its administrative unit. Chapel Hill-Carrboro City Sch. Sys. v. Chavioux, 116 N.C. App. 131, 446 S.E.2d 612 (1994).

Tuition for "Out-of-County" Students Not Improper. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by G.S. 115-352, and no new school district was properly formed later; therefore, the school board had the authority to charge the contested tuition to the "out-of-county" students. Brown v. Chatham County Bd. of Educ., 187 N.C. App. 274, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

County Board of Education could not require the payment of an exit tuition fee as a condition to approving the transfer of a county resident student to a school system in a different county, as the exit tuition fee is not provided for by the constitution and statutes of this State. Streeter v. Greene County Bd. of Educ., 115 N.C. App. 452, 446 S.E.2d 107 (1994).

Out-of-County Students. — Judgment for a school board in a suit seeking to strike down the school board's policy of charging "out-of-county" students tuition to attend its schools was proper because a special school district formed by a prior agreement was abolished by former G.S. 115-352, and no new school district was properly formed later; the parents and the students offered no proof of a later agreement nor of approval by the state board of education of any such agreement, and did not show there was a payment of a pro rata share of public school money, as required by the statute if such a school district was officially formed. The school board thus had the authority to charge the contested tuition. Brown v. Chatham County Bd. of Educ., 187 N.C. App. 274, 652 S.E.2d 737, 2007 N.C. App. LEXIS 2366 (2007).

Applied in Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

Cited in Ballard v. Weast, 121 N.C. App. 391, 465 S.E.2d 565 (1996).

OPINIONS OF ATTORNEY GENERAL

Construction with § 115C-366. — Under the rules of statutory construction, G.S. 115C-366 and this section must be construed together and the provisions of both must be given effect. See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Discretionary Authority to Enroll Student Domiciled Outside the State. — While this section does not expressly provide that local boards of education may enroll students domiciled outside the State, the authority to charge tuition for such students is necessarily dependent upon the authority, in the first instance, to enroll such students. This discretionary authority to enroll students domiciled outside the State, with or without the payment of tuition, carries with it the authority to establish additional terms and conditions for enrollment (e.g., that an adult within the system, through a guardianship or otherwise, agree to assume responsibility for the student.) See opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

§ 115C-366.2: Repealed by Session Laws 2006-65, s. 2, effective July 1, 2006.

Editor's Note. — This section was also amended by Session Laws 2006-69, s. 3(i), effective July 10, 2006, which substituted "G.S. 115C-111.3(a)" for "G.S. 115C-140.1(a)" in clause (ii) of the first sentence. The section is set out above as repealed.

§ 115C-367. Assignment on certain bases prohibited.

No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where local school administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts: Provided, however, that the board of education of a local school administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient.

The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of a local school administrative unit. (1969, c. 1274; 1981, c. 423, s. 1; 2006-69, s. 3(j).)

Cross References. — As to eligibility for admission to summer school, see G.S. 115C-233.

CASE NOTES

Editor's Note. — *The case annotated below was decided under corresponding provisions of former Chapter 115.*

Constitutionality of Former Provisions. — There was nothing unconstitutional in the first paragraph of former G.S. 115-176.1, similar to the first paragraph of this section. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970), aff'd, 402 U.S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586, appeal dismissed, 402 U.S. 47, 91 S. Ct. 1292, 28 L. Ed. 2d 590 (1971).

The first sentence of the second paragraph of former G.S. 115-176.1, similar to the second paragraph of this section, allowed school boards to establish a geographically zoned neighborhood school system, but did not require them to do so. Consequently, this sentence did not prevent the boards from complying with their constitutional duty in circumstances where zoning and neighborhood school plans might not result in a unitary system. The clause in the sentence permitting assignment for "any other reason" in the board's "sole discretion" meant simply that the school boards could assign outside the neighborhood school zone for noninvidious, administrative reasons. So read, it presented no constitutional difficulty. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970), aff'd, 402 U.S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586, appeal dismissed, 402 U.S. 47, 91 S. Ct. 1292, 28 L. Ed. 2d 590 (1971).

The third paragraph of former G.S. 115-176.1, similar to the third paragraph of this section, merely allowed the school board noninvidious discretion to assign students to schools for valid administrative reasons. It did not relate to race at all and, so read, was constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970), aff'd, 402 U.S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586, appeal dismissed, 402 U.S. 47, 91 S. Ct. 1292, 28 L. Ed. 2d 590 (1971).

The fourth paragraph of former G.S. 115-176.1, similar to the fourth paragraph of this section, relieved school boards from compliance with the statute where they were implementing voluntarily adopted freedom-of-choice plans within their systems. It did not require the boards to adopt freedom of choice in any particular situation, but left them free to comply with their constitutional duty by any effective means available, including, where appropriate, freedom of choice. So interpreted, the paragraph was constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970), aff'd, 402 U.S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586, appeal dismissed, 402 U.S. 47, 91 S. Ct. 1292, 28 L. Ed. 2d 590 (1971).

Provisions of former G.S. 115-176.1 (not carried over into this section) which prohibited school boards from assigning, compelling, or involuntarily bussing students on account of race or in order to racially "balance" the school system were unconstitutional. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43, 91 S. Ct. 1284, 28 L. Ed. 2d 586 (1971).

The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554, rehearing denied, 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 690 (1971).

Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554, rehearing denied, 403 U.S. 912, 91 S. Ct. 2201, 29 L. Ed. 2d 690 (1971).

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008).

§ 115C-368. Notice of assignment.

In exercising the authority conferred by G.S. 115C-366(b), each local board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the local administrative unit. (1955, c. 366, s. 2; 1956, Ex. Sess., c. 7, s. 2; 1981, c. 423, s. 1.)

CASE NOTES

As to good faith and reasonable administration required on the part of public officials, see McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959); Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961), rev'd on other grounds, 309 F.2d 630 (4th Cir. 1962).

§ 115C-369. Application for reassignment; notice of disapproval; hearing before board.

(a) The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a local board of education may, within 10 days after notification of the assignment, or the last publication thereof, apply in writing to the local board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the local board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the local board of education shall give notice to the applicant by registered or certified mail, and the applicant may within five days after receipt of such notice apply to the local board for a hearing. The applicant shall be entitled to a prompt and fair hearing on the question of reassignment of such child to a different school.

(b) The local board of education shall make a final determination on the question of reassignment. The board of education may establish initial hearings prior to the final determination. If the board of education establishes initial hearings, the board of education shall designate hearing panels composed of not less than two members of the board to hear such appeals in the name of the board of education, and may designate a hearing officer to hear such appeals for fact-finding and a recommended decision, or may designate both. If both are designated, an applicant must select the entity to hold the hearing. The hearing panel's recommendations or the hearing officer's recommended findings of fact and recommended decision shall be submitted to the board of education for final determination.

(c) At the hearing the local board of education shall consider the best interest of the child, the orderly and efficient administration of the public schools, the proper administration of the school to which reassignment is requested and the instruction, health, and safety of the pupils there enrolled, and shall assign said child in accordance with such factors. The local board shall render prompt decision upon the hearing, and notice of the decision shall be given to the applicant by mail, telephone, telefax, e-mail, or any other method reasonably designed to achieve notice. (1955, c. 366, s. 3; 1956, Ex. Sess., c. 7, s. 3; 1981, c. 423, s. 1; 1987, cc. 406, 791; 2007-501, s. 1.)

CASE NOTES

Editor's Note. — The cases below were decided under corresponding provisions of former Chapter 115.

The combination of investigatory and quasi-judicial powers is established practice generally approved by the courts and subject to judicial review in case of abuse. In the operation of the public schools, such an arrangement is well-nigh essential, and the North Carolina statute implies that both functions shall be exercised by the boards of education. Holt v. Raleigh City Bd. of Educ., 265 F.2d

95 (4th Cir. 1959), cert. denied, 361 U.S. 818, 80 S. Ct. 59, 4 L. Ed. 2d 63 (1959).

The authority to make the assignment and enrollment of pupils is placed in the county board of education, and there is no direction for the participation of the State Board of Education in these matters. A motion to amend a complaint to join these officials as additional defendants was denied in the instant case. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959).

Section Does Not Apply to Board's Rules on School Calendar. — G.S. 115C-369 provides no means for determining whether a board of education's plan for mandatory year-round schools is statutorily or constitutionally permitted. The statute focuses on the individual assignment of a student and would not supply the relief sought in a declaratory judgment complaint regarding the board's plan and regulations. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Reassignment Is Made on Individual Basis. — Reassignment is in the nature of a special case and made on an individual student basis, upon the request of the parent. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

And Emphasis Is on Welfare of Child and Effect on School. — Former corresponding statute placed all emphasis on the welfare of the child and the effect upon the school to which reassignment was requested. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964); In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the best interest of the applying child which must guide the deliberations and control the decision of the board, unless the granting of the application will interfere with the proper administration of the school to which the child seeks reassignment or will endanger the proper instruction, the health or the safety of the other children enrolled therein. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Right to Apply for Reassignment Is Limited to Parent, Guardian or Person in Loco Parentis. — The right to apply for a reassignment is limited to the parent, guardian, or person standing in loco parentis to the child seeking reassignment. Notice of the board's decision must be given to the applicant or his parent. No notice is required to be given to the parents of other children; they are not parties to the hearing, and they are not entitled to notice of the board's decision. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

The parent is authorized to apply to the appropriate public school official for the enrollment of his child or children by name in any public school within the county or city administrative unit in which such child or children reside. But such parent is not authorized to apply for admission of any child or children other than his own, unless he is the guardian of such child or children or stands in loco parentis to such child or children. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Criteria for Considering Applications for Transfer. — The courts have uniformly approved residence and academic preparedness as appropriate criteria for considering applications for transfer. A variety of other criteria would undoubtedly be appropriate in given situations, so long as such criteria are not used in such a way as to deprive individuals of their constitutional rights. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961), rev'd on other grounds, 309 F.2d 630 (4th Cir. 1962).

After Assignment by School Board, Application Required for Reassignment. — No authority existed to support a trial court's requirement of informed parental consent prior to a board of education's assignment of student to year-round schools. Under G.S.115C-366(b), when a local school board exercised its "full and complete" authority to assign a student to a year-round school, that decision was "final" subject only to an application by the student under G.S. 115C-369 for reassignment. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Failure of Parents and Child to Appear Before Board for Interrogation. — A board of education, requested to transfer a child from one school to another, was clearly within its right before making its initial decision in requesting the child and his parents to appear for interrogation, and they on their part were clearly delinquent in refusing to attend and to furnish all relevant information in their possession. They were not justified in deferring their appearance until the "formal hearing" provided by statute for a review of an adverse decision, or on failing, even at that stage, to appear in person and submit to examination by members of the board. Thus they were not entitled to appeal for relief to the federal court, not having exhausted the remedies afforded them by the statutes of the State. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959), cert. denied, 361 U.S. 818, 80 S. Ct. 59, 4 L. Ed. 2d 63 (1959).

Failure to Make Second Application Following Merger of Schools. — Where plaintiffs were assigned by the board to the school structure to which they sought admission, but a merger of two schools was followed in a few days by a series of actions whereby the newly integrated school was disintegrated without notice to the plaintiffs, their desire to attend an integrated school was completely frustrated, and relief should not be denied on the ground that the plaintiffs had failed to make a second application to the board for reassignment after the merger of the two schools had taken place, nor should the plaintiffs be required again to pursue administrative remedies without the aid of the court. McCoy v. Greensboro City Bd. of Educ., 283 F.2d 667 (4th Cir. 1960).

Separate Suit for Each Child Is Not Required. — The dismissal of a suit by several parents of school children on the ground that they had not exhausted their administrative remedies does not mean that there must be a separate suit for each child on whose behalf it is claimed that an application for reassignment has been improperly denied. There can be no objection to the joining of a number of applicants in the same suit as has been done in other cases. The county board of education, however, is entitled, to consider each application on its individual merits, and if this is done without unnecessary delay and with scrupulous observance of individual constitutional rights, there will be no just cause for complaint. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959).

Exhaustion of State Remedies Required. — Persons aggrieved by the actions of the school officials of a state may not appeal for relief to the federal courts until they have exhausted the remedies afforded them by the statutes of the State. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959), cert. denied, 361 U.S. 818, 80 S. Ct. 59, 4 L. Ed. 2d 63 (1959).

Exhaustion of Administrative Remedies Not Required. — Claims for declaratory relief under G.S. 1-254 made by parents of students were not barred for failure to exhaust administrative remedies because the parents challenged the validity of a Board of Education's plan to use year-round schools to alleviate overcrowding, which did not fall within the scope of G.S. 115C-369. None of the factors specified in G.S. 115C-369(c) for consideration by the Board in making a decision under the statute addressed the issues regarding the validity of the plan. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

System of Free Transfers Held Constitutionally Permissible. — Where a system of free transfers was the only means by which many black students could attend integrated schools, and each pupil in the system had the option, the existence of the right to transfer was constitutionally permissible. Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Parent's Actions Not Moot on Issue of School Calendar. — Because children's individual reassignments to mandatory year round schools did not terminate the uncertainty and controversy giving rise to their action under G.S. 115C-369 as would a declaration that the Board of Education did or did not have the authority to implement its plan to convert traditional calendar schools to mandatory year round schools, the claims alleged by the parents of those children were not moot. Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 2008 N.C. App. LEXIS 872 (2008), aff'd 363 N.C. 165, 675 S.E.2d 345 (2009).

Assignment to Year-Round School. — County board of education can assign students to year-round schools without parental consent because the General Assembly has conferred broad, specific, and sole authority upon local school boards to determine school calendars; when assignment to a particular school places too great a burden on individual children parents may seek reassignment and judicial review of any assignment decision. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

§ 115C-370. Judicial review of board's decision.

A decision of a local board under G.S. 115C-369 is final and, except as provided in this section, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision. (1955, c. 366, s. 4; 1969, c. 44, s. 73; 1981, c. 423, s. 1; 1987, c. 827, s. 51.)

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 115.*

Who May Appeal. — An appeal to the superior court from the denial of an application made by any parent, guardian or person standing in loco parentis to any child or children for the admission of such child or children to a particular school must be prosecuted in behalf of the child or children by the interested parent, guardian or person standing in loco parentis to such child or children respectively and not collectively. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956); In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Where a municipal board of education grants the applications for reassignment of certain pupils, appeal from its decision may be taken as to each child only by the child's parent, guardian or person standing in loco parentis; the parents of other children attending the schools to which the reassignments are made are not the parties aggrieved by such reassignments and have no standing in court to contest the assignments. Moreover, each reassignment must be challenged separately; reassignments cannot be challenged en masse. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

No agreement of the board can deprive the courts of this State of jurisdiction conferred upon them by statute, or bar the court before which an appeal from the board's order is brought from entering the judgment prescribed in such case. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

And Courts Will Determine Right to Reassignment According to Statutory Standards. — So long as the Pupil Assignment Law remains the law of North Carolina, the courts of this State, in passing upon appeals from orders of the boards of education concerning applications for the reassignment of children to the public schools, will determine the right to reassignment in accordance with the standards prescribed by the statute, not pursuant to agreements between the board and another or letters from such other party setting forth his ex parte construction of the alleged agreement. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The court has the authority to reassign the child to the school which he and his parents want him to attend, if that is in the best interest of the child and the child's enrollment therein will not interfere with the proper administration of that school or endanger the instruction, the health or the safety of the other pupils there enrolled. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Or It May Reassign Him to School in Another Administrative Unit. — Upon appeal, the superior court has the authority to reassign the child to a school of another administrative unit, even though the board of education of the administrative unit wherein the child resides objects. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Mandamus. — An application for mandamus, requiring the immediate integration of all black pupils residing in the administrative unit, is neither contemplated nor authorized by this section. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Federal Remedies. — The appeals provided by the Pupil Assignment Law are judicial and not administrative remedies, and after administrative remedies before the school boards have been exhausted, judicial remedies for denial of constitutional rights may be pursued at once in the federal courts without pursuing state court remedies. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), cert. denied, 353 U.S. 910, 77 S. Ct. 665, 1 L. Ed. 2d 664 (1957); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958), aff'd, 265 F.2d 95 (4th Cir.), cert. denied, 361 U.S. 818, 80 S. Ct. 59, 4 L. Ed. 2d 63 (1959); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959), cert. denied, 361 U.S. 840, 80 S. Ct. 78, 4 L. Ed. 2d 79 (1959).

Applied in Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

§ 115C-371. Assignment to special education programs.

Assignment of students to special education programs is subject to Article 9 of this Chapter. (1981, c. 423, s. 1; 2006-69, s. 3(k).)

§ 115C-372. Assignment to school bus.

Assignment of students to school buses is subject to the provisions of G.S. 115C-244. (1981, c. 423, s. 1.)

§§ 115C-373 through 115C-375: Reserved for future codification purposes.

ARTICLE 25A.

Special Medical Needs of Students.

§ 115C-375.1. To provide some medical care to students.

It is within the scope of duty of teachers, including substitute teachers, teacher assistants, student teachers, or any other public school employee when authorized by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or lifesaving techniques in which the employee has been trained in a program approved by the State Board of Education. No employee, however, shall be required to administer drugs or medication or attend lifesaving techniques programs.

Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any authorized act or for any omission relating to that act unless the act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Any person, serving in a voluntary position at the request of or with the permission or consent of the board of education or its designee, who has been given the authority by the board of education or its designee to act under (ii) above shall not be liable in civil damages for any authorized act or for any omission relating to the act unless the act amounts to gross negligence, wanton conduct, or intentional wrongdoing.

At the commencement of each school year, but before the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program. (2005-22, s. 2(b); 2006-264, ss. 57(a), (c).)

Editor's Note. — Session Laws 2005-22, s. 1, originally enacted this Article as Article 26A. It has been renumbered as Article 25A at the direction of the Revisor of Statutes.

Session Laws 2005-22, s. 6, provides: "The Department of Health and Human Services, Department of Public Instruction, or other appropriate State agencies shall apply for any federal grants for which the entity is eligible under 42 U.S.C. § 280g or other federal statutes or regulations related to treating, preventing, or training on children's asthma."

Session Laws 2006-264, s. 57(a), effective August 27, 2006, provides: "Article 26A of Chapter 115C of the General Statutes, as enacted by Section 1 of S.L. 2005-22, is recodified as Article 25A of Chapter 115C of the General Statutes."

§ 115C-375.2. Possession and self-administration of asthma medication by students with asthma or students subject to anaphylactic reactions, or both.

(a) Local boards of education shall adopt a policy authorizing a student with asthma or a student subject to anaphylactic reactions, or both, to possess and self-administer asthma medication on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events. As used in this section, "asthma medication" means a medicine prescribed for the treatment of asthma or anaphylactic reactions and includes a prescribed asthma inhaler or epinephrine auto-injector. The policy shall include a requirement that the student's parent or guardian provide to the school:

(1) Written authorization from the student's parent or guardian for the student to possess and self-administer asthma medication.

(2) A written statement from the student's health care practitioner verifying that the student has asthma or an allergy that could result in an anaphylactic reaction, or both, and that the health care practitioner prescribed medication for use on school property during the school day, at school-sponsored activities, or while in transit to or from school or school-sponsored events.

(3) A written statement from the student's health care practitioner who prescribed the asthma medication that the student understands, has been instructed in self-administration of the asthma medication, and has demonstrated the skill level necessary to use the asthma medication and any device that is necessary to administer the asthma medication.

(4) A written treatment plan and written emergency protocol formulated by the health care practitioner who prescribed the medicine for managing the student's asthma or anaphylaxis episodes and for medication use by the student.

(5) A statement provided by the school and signed by the student's parent or guardian acknowledging that the local school administrative unit and its employees and agents are not liable for an injury arising from a student's possession and self-administration of asthma medication.

(6) Other requirements necessary to comply with State and federal laws.

(b) The student must demonstrate to the school nurse, or the nurse's designee, the skill level necessary to use the asthma medication and any device that is necessary to administer the medication.

(c) The student's parent or guardian shall provide to the school backup asthma medication that shall be kept at the student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(d) Information provided to the school by the student's parent or guardian shall be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(e) If a student uses asthma medication prescribed for the student in a manner other than as prescribed, a school may impose on the student disciplinary action according to the school's disciplinary policy. A school may not impose disciplinary action that limits or restricts the student's immediate access to the asthma medication.

(f) The requirement that permission granted for a student to possess and self-administer asthma medication shall be effective only for the same school and for 365 calendar days and must be renewed annually.

(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this section, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. (2005-22, s. 1; 2006-264, s. 57(b).)

Editor's Note. — Session Laws 2005-22, s. 7, provides in part: "G.S. 115C-375.2, as established in Section 1 of this act, applies beginning with the 2005-2006 school year."

§ 115C-375.3. Guidelines to support and assist students with diabetes.

Local boards of education and boards of directors of charter schools shall ensure that the guidelines adopted by the State Board of Education under G.S. 115C- 12(31) are implemented in schools in which students with diabetes are enrolled. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. The boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans. Local boards of education and boards of directors of charter schools shall report to the State Board of Education annually, on or before August 15, whether they have students with diabetes enrolled and provide information showing compliance with the guidelines adopted by the State Board of Education under G.S. 115C-12(31). These reports shall be in compliance with the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. (2005-22, s. 3(a), (b); 2009-563, s. 1.)

Editor's Note. — This section was formerly codified as G.S. 115C-47(42). It was recodified as G.S. 115C-375.3 by Session Laws 2005-22, s. 3(a), effective April 28, 2005.

Effect of Amendments. — Session Laws 2009-563, s. 1, effective August 28, 2009, and applicable beginning with the 2009-2010 school year, inserted "and boards of directors of charter schools" in the first sentence; substituted "The boards" for "Local boards" at the beginning of the third sentence; and added the last two sentences of the section.

§ 115C-375.4. Meningococcal meningitis and influenza and their vaccines.

Local boards of education shall ensure that schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children. (2005-22, s. 4(a), (b).)

Editor's Note. — This section was formerly codified as G.S. 115C-47(44). It was recodified as G.S. 115C-375.4 by Session Laws 2005-22, s. 4(a), effective April 28, 2005.

Session Laws 2009-574, s. 13.1, provides: "The Department of Health and Human Services, Division of Public Health, may study the feasibility of establishing a school-based influenza vaccination pilot program. The purpose of the program would be to vaccinate against influenza all children ages six months to 18 years in accordance with the recommendations of the National Advisory Committee on Immunization Practices. In conducting the study, the Division may:

"(1) Examine the costs and benefits of establishing a school-based influenza vaccination pilot program;

"(2) Identify any barriers to implementing the school-based influenza vaccination pilot program and recommend strategies for removing the barriers; and

"(3) Determine the fiscal impact to the State of the proposed pilot program."

Session Laws 2009-574, s. 13.2, provides: "The Department of Health and Human Services may report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Governor not later than October 1, 2010."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

§ 115C-375.5. Education for pregnant and parenting students.

(a) Pregnant and parenting students shall receive the same educational instruction or its equivalent as other students. A local school administrative unit may provide programs to meet the special scheduling and curriculum needs of pregnant and parenting students. However, student participation in these programs shall be voluntary, and the instruction and curriculum must be comparable to that provided other students.

(b) Local boards of education shall adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or any program, class, or extracurricular activity because they are pregnant or parenting students and to provide assistance and support to encourage pregnant and parenting students to remain enrolled in school and graduate. The policy shall include, at a minimum, all of the following:

(1) Local school administrative units shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students.

(2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and parenting students shall be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds medically necessary. This includes absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent.

(3) Homework and make-up work shall be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because of their absence from school and, to the extent necessary, a homebound teacher shall be assigned. (2006-69, s. 4(a); 2009-330, s. 3.)

Editor's Note. — Session Laws 2006-69, ss. 4, 7 made this section effective July 10, 2006, and applicable beginning with the 2006-2007 school year.

Effect of Amendments. — Session Laws 2009-330, s. 3, effective July 24, 2009, added "and to provide assistance and support to encourage pregnant and parenting students to remain enrolled in school and graduate" at the end of the first sentence in the introductory paragraph of subsection (b).

§§ 115C-376, 115C-377: Reserved for future codification purposes.

Article 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children required to attend.

(a) Every parent, guardian or custodian in this State having charge or control of a child between the ages of seven and 16 years shall cause the child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or custodian in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause the child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school.

(b) No person shall encourage, entice or counsel any child of compulsory school age to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school board policy.

(c) The principal, superintendent, or a designee of the principal or superintendent shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause that does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used in this section includes all public schools and any nonpublic schools which have teachers and curricula that are approved by the State Board of Education.

(d) All nonpublic schools receiving and instructing children of compulsory school age shall be required to make, maintain, and render attendance records of those children and maintain the minimum curriculum standards required of public schools. If a nonpublic school refuses or neglects to make, maintain, and render required attendance records, attendance at that school shall not be accepted in lieu of attendance at the public school of the district to which the child shall be assigned. Instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

(e) The principal or the principal's designee shall notify the parent, guardian, or custodian of his or her child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal or the principal's designee shall notify the parent, guardian, or custodian by mail that he or she may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and the child's family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law enforcement officer accompany him or her if the attendance counselor believes that a home visit is necessary.

(f) After 10 accumulated unexcused absences in a school year, the principal or the principal's designee shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and the student's parent, guardian, or custodian, if possible, to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal or the principal's designee determines that the parent, guardian, or custodian has not made a good faith effort to comply with the law, the principal shall notify the district attorney and the director of social services of the county where the child resides. If the principal or the principal's designee determines that the parent, guardian, or custodian has made a good faith effort to comply with the law, the principal may file a complaint with the juvenile court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Upon receiving notification by the principal or the principal's designee, the director of social services shall determine whether to undertake an investigation under G.S. 7B-302.

(g) Documentation that demonstrates that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall constitute prima facie evidence that the child's parent, guardian, or custodian is responsible for the absences. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846; 1975, c. 678, s. 2; c. 731, s. 3; 1979, c. 847; 1981, c. 423, s. 1; 1985, c. 297; 1991 (Reg. Sess., 1992), c. 769, s. 2; 1998-202, s. 13(aa); 2001-490, s. 2.38; 2003-304, s. 3; 2009-404, s. 1.)

Editor's Note. — Session Laws 2009-574, s. 24.1, proivides: 'The Board of Governors of The University of North Carolina, in coordination with the Department of Public Instruction and the North Carolina Independent Colleges and Universities, may direct the appropriate entity to study the impacts of raising the compulsory public school attendance age prior to completion of a high school diploma from 16 to 17 or 18 and may report to the Joint Legislative Education Oversight Committee prior to May 1, 2010."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

Effect of Amendments. — Session Laws 2009-404, s. 1, effective August 5, 2009, and applies beginning with the 2009-2010 school year, inserted subsection designations; in subsection (a), substituted "custodian" for "other person" twice and "the child" for "such child" twice; in subsection (b), substituted "child of compulsory school age" for "such child" and inserted "board"; in subsection (c), substituted "a designee of the principal or superintendent" for "teacher who is in charge of such school," "in this section includes" for "herein is defined to embrace," and "any nonpublic schools which" for "such nonpublic schools as"; rewrote subsection (d), in subsection (e), made gender neutral changes and in the second sentence, inserted "or the principal's designee"; in subsection (f), inserted "or the principal's designee" three times and added the last sentence; and in subsection (g), substituted "documentation that demonstrates" for "evidence that shows," "constitute prima facie evidence" for "establish a prima facie case" and deleted the former last sentence, which read: "Upon receiving notification by the principal, the director of social services shall determine whether to undertake an investigation under G.S. 7B-302."

Legal Periodicals. — For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

For note, "The Squeal Rule: Statutory Resolution and Constitutional Implications — Burdening the Minor's Right of Privacy," see 6 Duke L.J. 1325 (1984).

For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

For comment, "The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools," see 74 N.C.L. Rev. 1913 (1996).

CASE NOTES

Editor's Note. — *Many of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Purpose of Statute. — The purpose of the compulsory attendance law is to prevent those in charge or control of children from encouraging or enticing said children to be absent from school unlawfully. In re McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976).

Jurisdiction. — Trial court did not err in finding defendant guilty of violating the Compulsory Attendance Law, G.S. 115C-378, because the trial court had jurisdiction over the matter when the discretion of a school principal to seek a warrant for a parent's violation of G.S. 115C-378 was not jurisdictional and was not an element of the offense; the procedures set forth in G.S. 115C-378 requiring that the schools take certain steps prior to causing a warrant to be issued are elements of the offense, and once each of these steps have been complied with, then the principal is vested with the discretion of whether or not to seek a criminal warrant for violation of the State's compulsory attendance law, and the exercise of this discretion is not a jurisdictional requirement nor is it an element of the offense. State v. Frady, — N.C. App. —, 673 S.E.2d 751, 2009 N.C. App. LEXIS 243 (2009).

Property Interest Entitles Students to Due Process. — Students in North Carolina have legitimate claims of entitlement to a public education, since by G.S. 115-1 (see now G.S. 115C-1), a uniform system of free public schools is provided throughout the State and students are required to attend by this section. Therefore, students have a property interest in public education and would be entitled to due process in connection with suspension from school. Pegram v. Nelson, 469 F. Supp. 1134 (M.D.N.C. 1979).

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under this section a child may attend public school. Second, under the same section, a child may attend an "approved", "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets the requirements of G.S. 115C-547 et seq. Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of G.S. 115C-555 et seq. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

The statute does not compel every child to attend public schools exclusively for the prescribed period. Such a law would be invalid. State v. Vietto, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Parent Asserting Rights Under Vaccination Statute. — Where it appeared that the defendant did everything within his power to keep his child in school, except to waive what he believed to be his rights under former G.S. 130-93.1 (h), so long as the defendant, in good faith, was asserting his rights as he conceived them under the statute, he was not subject to conviction under this section. State v. Miday, 263 N.C. 747, 140 S.E.2d 325 (1965).

Indictment for Noncompliance. — For a conviction of failure to keep children in school it was necessary for the indictment to allege, and for the State to offer evidence tending to show, not only that the parent or guardian of the children within the described age had failed or refused to send them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time during which the public school in the district in which they resided was in session. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Where the indictment does not sufficiently allege the failure of the parent or guardian to send the child to a school other than the public school in the district, an amendment may be allowed to cure the defect. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

An indictment charging a parent with unlawfully and willfully failing to cause his children, between the ages of 8 and 14 (now 7 and 16) years, to attend the public schools of the district of his and the children's residence, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be had under the charge set out in the indictment. State v. Lewis, 194 N.C. 620, 140 S.E. 434 (1927).

Willfulness is not an element of the offense. State v. Vietto, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Burden. — Where the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to a school other than the district school, and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury, placing the burden upon the defendant to so show, is reversible error. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Evidence Insufficient to Show That School Was Not Approved. — Defendant's motion for directed verdict should have been allowed, where the evidence showed that defendant removed her twelve-year-old child from the public schools and enrolled her in Learning Foundations of Wilmington, and the only evidence that Learning Foundations was not a nonpublic school approved by the State Board of Education was inherently speculative. State v. Vietto, 297 N.C. 8, 252 S.E.2d 732 (1979).

Competence of Testimony of Public School Officials. — Public school officials were competent to testify as to whether or not the school in which the defendant's daughter was placed was an "approved" nonpublic school. State v. Vietto, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Cited in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

OPINIONS OF ATTORNEY GENERAL

Transmittal of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Requirements for Home School. — Parents who establish a school in their home to educate their school-age children must have their home school recognized by the Office of Nonpublic Schools and meet the requirements of Article 39, Chapter 115C in order to meet the requirements of the Compulsory Attendance Law. See opinion of Attorney General to Mr. Charles C. McConnell, Superintendent, Haywood County Schools, 55 N.C.A.G. 86 (1986).

Parents who educate their child in a home school which has not met the requirements of Article 39 of Chapter 115C, but has been created as a satellite by another recognized home school, are not in compliance with the Compulsory Attendance Law. See opinion of Attorney General to Mr. Charles C. McConnell, Superintendent, Haywood County Schools, 55 N.C.A.G. 86 (1986).

Notice of Intent Not Required. — The North Carolina Division of Non-Public Education is not required to accept a notice of intent to operate a home school, and the school is not required to file such notice, where the home school does not enroll any children of compulsory school attendance age. See opinion of Attorney General to The Honorable J. Russell Capps N.C. House of Representatives, 1997 N.C.A.G. 54 (8/25/97).

Release to Attend Private School. — Local boards of education have the discretionary authority to release students from school for a part of the school day to attend a private school so long as the private school meets compulsory attendance requirements. A school board that elects to deny such permission does not violate the constitutional rights of parents or students. A board that elects to grant such permission should recognize, and should advise parents, that the absence from school may affect the student's academic progress. See opinion of Attorney General to Mr. W. Max Walser, Superintendent, Davidson County Schools, 57 N.C.A.G. 26 (1987).

§ 115C-379. Method of enforcement.

It shall be the duty of the State Board of Education to formulate the rules that may be necessary for the proper enforcement of the provisions of this Part. The Board shall prescribe (i) what shall constitute unlawful absence, (ii) what causes may constitute legitimate excuses for temporary nonattendance due to a student's physical or mental inability to attend or a student's participation in a valid educational opportunity such as service as a legislative page or a Governor's page, and (iii) under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a Class 3 misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any local school administrative unit that has a higher compulsory attendance feature than that provided herein. (1955, c. 1372, art. 20, s. 2; 1963, c. 1223, s. 7; 1981, c. 423, s. 1; 1993, c. 539, s. 887; 1994, Ex. Sess., c. 24, s. 14(c); 2007-186, s. 1.)

Effect of Amendments. — Session Laws 2007-186, s. 1, effective July 7, 2007, and applicable beginning with the 2007-2008 school year, substituted "the rules that" for "such rules and regulations as" in the first sentence; in the second sentence, inserted the (i), (ii) and (iii) designations, "a student's" and "or a student's participation in a valid educational opportunity such as service as a legislative page or a Governor's page," and made related punctuation changes.

§ 115C-380. Penalty for violation.

Except as otherwise provided in G.S. 115C-379, any parent, guardian or other person violating the provisions of this Part shall be guilty of a Class 1 misdemeanor. (1955, c. 1372, art. 20, s. 4; 1969, c. 799, s. 2; 1981, c. 423, s. 1; 1993, c. 539, s. 888; 1994, Ex. Sess., c. 24, s. 14(c); 2005-318, s. 1.)

Editor's Note. — This section, as amended by Session Laws 2005-318, s. 1, effective December 1, 2005, increasing the penalty from a Class 3 to a Class 1 misdemeanor and adding the exception at the beginning of the section, is applicable to offenses committed on or after that date.

Legal Periodicals. — For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

Jurisdiction. — Trial court did not err in finding defendant guilty of violating the Compulsory Attendance Law, G.S. 115C-378, because the trial court had jurisdiction over the matter when the discretion of a school principal to seek a warrant for a parent's violation of G.S. 115C-378 was not jurisdictional and was not an element of the offense; the procedures set forth in G.S. 115C-378 requiring that the schools take certain steps prior to causing a warrant to be issued are elements of the offense, and once each of these steps have been complied with, then the principal is vested with the discretion of whether or not to seek a criminal warrant for violation of the State's compulsory attendance law, and the exercise of this discretion is not a jurisdictional requirement nor is it an element of the offense. State v. Frady, — N.C. App. —, 673 S.E.2d 751, 2009 N.C. App. LEXIS 243 (2009).

§ 115C-381. School social workers; reports; prosecutions.

The Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the school social worker of the respective local school administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the school social worker of the local school administrative unit unless the law is complied with immediately. Upon recommendation of the superintendent, local boards of education may employ school social workers and such school social workers shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this Part: Provided, that local school administrative units shall provide in their local operating budgets for travel and necessary office expense for such school social workers as may be employed through State or local funds, or both. The State Board of Education shall determine the process for allocating school social workers to the various local school administrative units, establish their qualifications, and develop a salary schedule which shall be applicable to such personnel: Provided, that persons now employed by local boards of education as attendance counselors shall be deemed qualified as school social workers under the terms of this Part subject to the approval of said local boards of education.

The school social worker shall investigate all violators of the provisions of this Part. The reports of unlawful absence required to be made by teachers and principals to the school social worker shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this Part and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, ss. 3, 5; 1957, c. 600; 1961, c. 186; 1963, c. 1223, ss. 8, 9; 1981, c. 423, s. 1; 1985, c. 686, s. 3.)

§ 115C-382. Investigation of indigency.

If affidavit shall be made by the parent of a child or by any other person that any child who is required to attend school under G.S. 115C-378 is not able to attend school by reason of necessity to work or labor for the support of himself or the support of the family, then the school social worker shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable compliance with the attendance law. The court shall transmit its findings to the director of social services of the county or city in which the case may arise for such social services officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10; 1969, c. 982; 1981, c. 423, s. 1; 1985, c. 686, s. 4; 1991 (Reg. Sess., 1992), c. 769, s. 3.)

§ 115C-383. Attendance of deaf and blind children.

(a) Deaf Children and Blind Children to Attend School; Age Limits; Minimum Attendance. — Every deaf child and every blind child between the ages of six and 18 years of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school that has an approved program for the deaf or the blind, or in the case of a blind child, such child may attend a public school, for a term of not less than nine months each year. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and 18 years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf or public school as herein provided. As to any deaf child, or any blind child not attending a public school as herein provided, the superintendent of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from his custody any such blind or deaf child whenever such discharge seems necessary or proper. Such discharge or exemption shall be reviewed by the board of directors upon petition by the parent, guardian, or other interested person or the child who has been exempted or discharged: Provided, however, that such board shall not be required to review such discharge or exemption more than once during each calendar year. Whenever a blind or deaf child reaches the age of 18 years and is still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of 21, unless he becomes capable of self-support at an earlier date.

(b) Parents, etc., Failing to Enroll Deaf Child in School Guilty of Misdemeanor; Provisos. — The parents, guardians, or custodians of any deaf child between the ages of six and 18 years failing to enroll such deaf child or children in some school for instruction as provided herein, shall be guilty of a Class 1 misdemeanor: Provided, that this subsection shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf shall in his discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution, advising such parents, guardians, or custodians of the legal requirements of this subsection: Provided, further, that the willful failure of such parent, guardian, or custodian shall constitute a continuing offense and shall not be barred by the statute of limitations.

(c) Parents, etc., Failing to Send Blind Child to School Guilty of Misdemeanor; Provisos. — The parents, guardians, or custodians of any blind child between the ages of six and 18 years failing to send such child to some school for the instruction of the blind or public school shall be guilty of a Class 1 misdemeanor. This subsection shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the superintendent of some school for the instruction of the blind shall in his discretion serve written notice on such parents, guardians, or custodians directing that such child be sent to the said school or to a public school, advising such parents, guardians, or custodians of the legal requirements of this subsection: Provided, further, that the willful failure of such parents, guardians, or custodians shall constitute a continuing offense and shall not be barred by the statute of limitations. The authorities of the Governor Morehead School shall not be compelled to retain in their custody or under their instruction any incorrigible person of confirmed immoral habits.

(d) Local Superintendent to Report Blind and Deaf Children. — It shall be the duty of the local superintendents to report the names and addresses of parents, guardians, or custodians of any deaf or blind children residing within their respective local school administrative units to the superintendent of the institution provided for each. Such report also shall be made to the Department of Public Instruction. (1955, c. 1372, art. 20, ss. 7-10; 1969, c. 749, s. 1; 1981, c. 423, s. 1; 1993, c. 539, ss. 889, 890; 1994, Ex. Sess., c. 24, s. 14(c).)

Part 2. Student Records and Fees.

§ 115C-384. Student records and fees.

(a) In General. — The local board of education has the power to regulate fees, charges and solicitations subject to the provisions of G.S. 115C-47(6).

(b) Refund of Fees upon Transfer of Pupils.

(1) As used in this subsection:
  a. "Month" shall mean 20 school days.
  b. "First semester" shall mean the first 90 teaching days of the 180 days of the school year.
  c. "Second semester" shall mean the last 90 teaching days of the 180 days of the school year.
  d. "Term" shall have the same meaning as that of first semester or second semester.

(2) In all cases where pupils of a local school administrative unit of the public school system transfer to some other public school in another local school administrative unit or such pupils are compelled to leave the school in which they are enrolled because of some serious or permanent illness, or for any other good and valid reason, then such pupils or their parents shall be entitled to a refund of the fees and charges paid by them as follows:
  a. If the transfer or departure of the pupils from the school in which they are enrolled takes place within one month after enrollment, then all such fees and charges shall be refunded in full.
  b. If the transfer or leaving the school on the part of said pupils takes place after the first month and before the middle of the first semester, then one half of the fees for the first semester shall be refunded, and all fees and charges for the second semester shall be refunded.
  c. If the pupils transfer or leave the school after the middle of the first semester, then no first semester fees or charges shall be refunded.
  d. If the fees and charges on the part of such pupils have been paid for a year and such pupils transfer or leave the school at the end of the first semester or within the first month of the second semester, then all second semester fees and charges shall be refunded in full.
  e. If the fees and charges herein described and set forth have been paid for one year, and the pupils transfer or leave the school before the middle of the second semester, then one half of the second semester fees shall be refunded.
  f. The words "fees" and "charges" as used in this subsection shall not include any fees or charges paid for insurance or fees charged for expendable materials.

g. If the pupils transfer or leave the school after the middle of the second semester, then no fees shall be refunded.

h. If the amount of total refund as determined by this subsection shall be less than one dollar ($1.00), no refund shall be paid.

(3) The principal shall be responsible for refunding fees and charges at the place of the collection of the fees and charges by check made payable to the parent or guardian of pupils leaving the school as noted in subdivision (2) above.

(c) Rental Fees for Textbooks Prohibited; Damage Fees Authorized. — No rental fees are permitted for the use of textbooks, but damage fees may be collected pursuant to the provisions of G.S. 115C-100. (1969, c. 756; 1981, c. 423, s. 1.)

§§ 115C-385 through 115C-389: Reserved for future codification purposes.

ARTICLE 27.

Discipline.

§ 115C-390. School personnel may use reasonable force.

Except as restricted or prohibited by rules adopted by the local boards of education, principals, teachers, substitute teachers, voluntary teachers, and teacher assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969, c. 638, ss. 2, 3; 1971, c. 434; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 21; 1989, c. 585, s. 6; 1991, c. 269, s. 1.)

Cross References. — As to allowance of attorneys' fees in actions against principals or teachers resulting from use of corporal punishment, see G.S. 6-21.4.

Legal Periodicals. — For survey on corporal punishment, see 70 N.C.L. Rev. 2058 (1992).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Constitutionality Generally. — The second paragraph of former G.S. 115-146, similar to this section, was constitutional on its face. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

The concept of liberty in U.S. Const., Amend. XIV, embraces the right of a parent to determine and choose between means of discipline of children. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

A parent's right of total opposition to corporal punishment is not fundamental in a constitutional sense. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

A student has an interest, protected by the concept of liberty in U.S. Const., Amend. XIV, in avoiding corporal punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

Liberty under U.S. Const., Amend. XIV embraces the right of parents generally to control means of discipline of their children. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

To implement the statute authorizing corporal punishment without according to students procedural due process would be a violation of U.S. Const., Amend. XIV. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

In their statutory context the words "reasonable" and "lawful" are not intended to be likened to the due process and equal protection clauses of the United States Constitution. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

"Reasonable" and "lawful" seem to embody no more than the traditional tort concepts that a person privileged to use force can use only the force necessary under the circumstances, i.e., reasonable force, and that he can use force only for the purpose for which he is granted the privilege, i.e., pursuant to his lawful authority. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

The State has an interest in the maintenance of order in the schools sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment for disciplinary purposes. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

And the State historically has been granted broader powers over children than over adults. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

But school officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972). See also, Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

Due-Process Requirements. — Teachers and school officials must accord to students minimal procedural due process in the course of inflicting corporal punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

The State has failed to provide any procedural protection to insure that those acting under the authority of the statute authorizing corporal punishment will adhere to its dictates and neither punish arbitrarily nor use unreasonable force. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

Except for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use, and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

A teacher or principal must punish corporally in the presence of a second school official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present his side to the second official; the requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

An official who has administered corporal punishment must provide the child's parent, upon request, a written explanation of his reasons and the name of the second official who was present. Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975), aff'd, 423 U.S. 907, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975).

County school board's policy regulating corporal punishment upheld. See Kurtz v. Winston-Salem/Forsyth County Bd. of Educ., 39 N.C. App. 412, 250 S.E.2d 718 (1979).

There can be no recovery for corporal punishment if the punishment is reasonable in light of its purpose. Gaspersohn ex rel. Gaspersohn v. Harnett County Bd. of Educ., 75 N.C. App. 23, 330 S.E.2d 489, cert. denied, 314 N.C. 539, 335 S.E.2d 315 (1985).

Jury Instructions. — A proposed instruction that corporal punishment should never be employed as a first line of punishment except in cases in which the act of the student is so antisocial or disruptive in nature as to shock the conscience was contrary to this section. The court correctly charged the jury that if a school official failed to exercise ordinary care and inflicted permanent or long lasting injury that was the natural and probable result of his action that he would be liable. Gaspersohn ex rel. Gaspersohn v. Harnett County Bd. of Educ., 75 N.C. App. 23, 330 S.E.2d 489, cert. denied, 314 N.C. 539, 335 S.E.2d 315 (1985).

The court could correctly refuse to give an instruction that boys, but not girls, were given, as an alternative to corporal punishment, the choice of raking leaves. When student chose corporal punishment as an alternative to in-school suspension, the question was whether a reasonable amount of force was used, not whether some other form of punishment should have been used. Gaspersohn ex rel. Gaspersohn v. Harnett County Bd. of Educ., 75 N.C. App. 23, 330 S.E.2d 489, cert. denied, 314 N.C. 539, 335 S.E.2d 315 (1985).

Cited in Word of Faith Fellowship, Inc. v. Rutherford County Dep't of Soc. Servs., 329 F. Supp. 2d 675, 2004 U.S. Dist. LEXIS 10638 (W.D.N.C. 2004).

§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

(a) Local boards of education shall adopt policies not inconsistent with the provisions of the Constitutions of the United States and North Carolina, governing the conduct of students and establishing procedures to be followed by school officials in suspending or expelling any student, or in disciplining any student if the offensive behavior could result in suspension, expulsion, or the administration of corporal punishment. Local boards of education shall include a reasonable dress code for students in these policies.

The policies that shall be adopted for the administration of corporal punishment shall include at a minimum the following conditions:

(1) Corporal punishment shall not be administered in a classroom with other children present;

(2) The student body shall be informed beforehand what general types of misconduct could result in corporal punishment;

(3) Only a teacher, substitute teacher, principal, or assistant principal may administer corporal punishment and may do so only in the presence of a principal, assistant principal, teacher, substitute teacher, teacher assistant, or student teacher, who shall be informed beforehand and in the student's presence of the reason for the punishment; and

(4) An appropriate school official shall provide the child's parent or guardian with notification that corporal punishment has been administered, and upon request, the official who administered the corporal punishment shall provide the child's parent or guardian a written explanation of the reasons and the name of the second school official who was present.

Each local board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year. Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

(1) To quell a disturbance threatening injury to others;

(2) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;

(3) For self-defense;

(4) For the protection of persons or property; or

(5) To maintain order on school property, in the classroom, or at a school-related activity on or off school property.

(b) The principal of a school, or his or her delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education. When a student is suspended under this subsection for a period of 10 days or less, the principal, or his or her delegate, shall give notice to the student's parent or guardian of the student's suspension and the student's rights under this subsection. The notice shall be given by telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice. A student suspended under this subsection shall be provided all of the following:

(1) The opportunity to take textbooks home for the duration of the suspension.

(2) The right to inquire about homework assignments for the duration of the suspension.

(3) The opportunity to take any quarterly, semester, or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend for periods of times in excess of 10 school days but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) Notwithstanding G.S. 115C-378:

(1) A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subdivision, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate.

(2) A local board of education may expel any student subject to G.S. 14-208.18. The local board of education's decision to expel a student under this subdivision shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subdivision, the local board of education shall consider whether there is an alternative program that may be offered by the local school administrative unit to provide educational services. As provided by G.S. 14-208.18(f), if the local board of education determines that a student shall be provided educational services on school property, the student must be under the supervision of school personnel at all times.

(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h). The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

(d2)(1) The superintendent shall, upon recommendation of the principal, remove to an alternative educational setting, as provided in subdivision (4) of this subsection, any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel. If no appropriate alternative educational setting is available, then the superintendent shall, upon recommendation of the principal, suspend for no less than 300 days but no more than 365 days any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel.

(2) The superintendent may, upon recommendation of the principal, remove to an alternative educational setting any student who is at least 13 and who does one of the following:
  a. Physically assaults a teacher or other adult who is not a student.
  b. Physically assaults another student if the assault is witnessed by school personnel.
  c. Physically assaults and seriously injures another student.

If no appropriate alternative educational setting is available, then the superintendent may, upon recommendation of the principal, suspend this student for up to 365 days.

(3) For purposes of this subsection, the conduct leading to suspension or removal to an alternative educational setting must occur on school property or at a school-sponsored or school-related activity on or off school property. This subsection shall not apply when the student who is subject to suspension or removal was acting in self-defense. If a teacher is assaulted or injured and as a result a student is suspended or removed to an alternative educational setting under this subsection, then the student shall not be returned to that teacher's classroom unless the teacher consents. If a student is suspended under this subsection, the board may assign the student to an alternative educational setting upon the expiration of the period of suspension.

(4) If the superintendent removes the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred on or before the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and the first 90 school days in the following school year. If the superintendent chooses to remove the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred after the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and for the entire subsequent school year. Notwithstanding these requirements, the superintendent may authorize a shorter or longer length of time a student must remain in an alternative educational setting if the superintendent finds this would be more appropriate based upon the recommendations of the principals of the alternative school and the school to which the student will return.

(d3) A local board of education or superintendent shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

(d4) A local board of education or superintendent may suspend for up to 365 days any student who:

(1) By any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, substance, or material designed to cause harmful or life-threatening illness or injury to another person;
(2) With intent to perpetrate a hoax, conceals, places, disseminates, or displays on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, machine, instrument, artifact, letter, package, material, or substance, so as to cause any person reasonably to believe the same to be a substance or material capable of causing harmful or life-threatening illness or injury to another person;
(3) Threatens to commit on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that threat is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption;
(4) Makes a report, knowing or having reason to know the report is false, that there is about to occur or is occurring on educational property or at a school-sponsored curricular or extracurricular activity off educational property an act of terror that is likely to cause serious injury or death, when that report is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption; or
(5) Conspires to commit any of the acts described in this subsection.

(d5) When a student is recommended for expulsion or suspension for more than 10 days, the local board shall give written notice to the student's parent. For the purposes of this subsection, the word "parent" shall mean parent, guardian, caregiver, or other person legally responsible for the student. The written notice shall be provided to the student's parent by the end of the workday during which the suspension for more than 10 days or expulsion is recommended when reasonably possible, but in no event later than the end of the following workday. The written notice shall provide at least the following information:

(1) A description of the incident leading to the recommendation that the student be expelled or suspended for more than 10 days;
(2) The specific provisions of the student conduct policy or rule alleged to have been violated;
(3) The specific process by which the parent may request a hearing to contest the suspension for more than 10 days or expulsion, including the number of days within which the hearing must be requested;
(4) The process by which a hearing will be held, including, to the extent provided by law, the student's opportunity to examine evidence and present evidence, to confront and cross-examine witnesses supporting the charge, and to call witnesses to verify the student's version of the incident;
(5) The parent is permitted to retain an attorney to represent the student in the hearing process;
(6) The extent to which the local board policy permits the parent to have an advocate to accompany the student to assist in the presentation of his or her appeal instead of an attorney; and

(7) The parent has a right to review the student's educational records prior to the hearing.

Written notice may be provided by certified mail, telefax, e-mail, or any other written method reasonably designed to achieve actual notice of the recommendation for expulsion or suspension for more than 10 days. If English is the second language of the parent or guardian, the notice shall be written in the parent or guardian's first language when the appropriate foreign language resources are readily available and in English. Both versions shall be in plain language and shall be easily understandable.

(e) A decision of a superintendent under subsection (c), (d1), (d2), (d3), or (d4) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) Local boards of education shall ensure they have clear policies governing the conduct of students. At a minimum, these policies shall state the consequences of violent or assaultive behavior, possessions of weapons, and criminal acts committed on school property or at school-sponsored functions. These policies shall provide that when notice is given to students or parents of a suspension of more than 10 days or expulsion, this notice shall identify what information will be included in the student's official record and the procedure for expungement of this information under G.S. 115C-402. The State Board shall develop guidelines to assist local boards in this process.

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with Article 9 of this Chapter and with federal laws and regulations.

(h) Notwithstanding any other law, no officer or employee of the State Board of Education or of a local board of education shall be civilly liable for using reasonable force, including corporal punishment, in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1; 1987, c. 572, ss. 1, 2; c. 827, s. 52; 1989, c. 585, s. 7; 1993, c. 509, s. 4; 1995, c. 293, ss. 1, 2; c. 386, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 21; 1997-443, s. 8.29(q)(1); 1998-220, ss. 7-9; 1999-257, ss. 6-8; 1999-387, ss. 1-3; 2001-195, s. 2; 2001-244, s. 1; 2001-363, s. 2(c); 2001-487, s. 75; 2001-500, ss. 4, 5, 6.1; 2006-69, s. 3(*l*); 2007-466, ss. 1, 2; 2008-117, s. 12.1; 2009-61, s. 1.)

Cross References. — As to the suspension or dismissal of pupils by a principal, see G.S. 115C-288.

Editor's Note. — Session Laws 1993, c. 509, s. 4, effective July 24, 1993, was codified as subsection (f) of this section at the direction of the Revisor of Statutes.

Session Laws 2001-178, ss. 1(a)-(j), provide that the State Board of Education, in cooperation with the Department of Juvenile Justice and Delinquency Prevention, shall establish a pilot program under which participating local school administrative units place all students who are on short-term out-of-school suspension in alternative learning programs. These alternative placements may be in alternative learning programs, day reporting centers, and other similar supervised programs for students.

G.S. 115C-391(d4) as enacted by S.L. 2001-244 was recodified as G.S. 115C-391(d5) by Session Laws 2001-500, s. 6.1.

Session Laws 2008-117, s. 21.1 is a severability clause.

Effect of Amendments. — Session Laws 2007-466, ss. 1 and 2, effective August 29, 2007, and applicable beginning with the 2007-2008 school year, rewrote the exisiting provisions of subsection (b) and added subdivisions (b)(1) through (b)(3); inserted "by certified mail, telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice" in subsection (d5).

Session Laws 2008-117, s. 12.1, effective December 1, 2008, and applicable to offenses committed on or after that date, redesignated the previously exisiting provisions of subsection (d) as subsection (d) and subdivision (d)(1), made minor stylistic changes and substituted "subdivision" for "subsection" near the middle of subdivision (d)(1); and added subdivision (d)(2).

Session Laws 2009-61, s. 1, effective June 5, 2009, and applicable beginning with the 2009-2010 school year, rewrote subsection (d5).

Legal Periodicals. — For article, "Leandro v. State and the Constitutional Limitation on School Suspensions and Expulsions in North Carolina" see 83 N.C. L. Rev. 1507 (2005).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under corresponding provisions of former Chapter 115.*

Double Jeopardy. — Expulsion from a school for violation of school policies is not punishment so as to invoke the protection of constitutional double jeopardy restrictions because important, if not essential, nonpunitive purposes are served by administrative suspension and expulsion. State v. Davis, 126 N.C. App. 415, 485 S.E.2d 329 (1997).

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Extended suspension or exclusion from school deprives a student of important rights and liberties. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Due Process Requirements for Prolonged Suspension. — Where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, due process requires a number of procedural safeguards to students, such as: (1) Notice to parents and student in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought; (2) a full hearing after adequate notice; (3) a hearing conducted by an impartial tribunal; (4) the right to examine exhibits and other evidence against the students; (5) the right to be represented by counsel (though not at public expense); (6) the right to confront and examine adverse witnesses; (7) the right to present evidence on behalf of the student; (8) the right to make a record of the proceedings; and (9) the requirement that the decision of the authorities be based upon substantial evidence. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Due process rights of a student were not violated by a 15-day suspension where the record showed that the student was given notice of the charges, an opportunity to be heard, and an opportunity to examine and cross-examine witnesses. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Lack of Jurisdiction Over Short-Term Suspensions. — By expressly providing for judicial review for disciplinary actions resulting in suspensions of more than 10 days, but failing to indicate that such review is available for shorter suspensions, the legislature did not intend to grant superior courts subject matter jurisdiction over such appeals. Stewart v. Johnston County Bd. of Educ., 129 N.C. App. 108, 498 S.E.2d 382 (1998).

Trial court lacks subject matter jurisdiction to review a two-day suspension imposed on a student because neither G.S. 115C-391 nor G.S. 115C-45 allows an appeal of such to a superior court. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Prohibition Against Distribution of Printed Matter Held Invalid Prior Restraint. — A school rule which prohibited pupils from distributing any printed material without the express permission of the principal was held to be an invalid attempt at prior restraint because it lacked any criteria to be followed by the school authorities in determining whether to grant or deny permission, and any procedural safeguards in the form of an expeditious review procedure of the decision of the school authorities. Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971).

Equal Protection Argument Failed. — Even though a student failed to preserve an equal protection challenge to a suspension by failing to assign error or present authority, the argument was meritless at any rate under arbitrary and capricious review because there was a gender-neutral reason for a longer suspension; prior incidents of "shanking" at a high school did not result in the exposure of buttocks or genitalia. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Ban on the use or possession of tobacco products by students at school is a valid exercise of the authority delegated to the various boards of education by the legislature, and does not violate the guarantee of equal protection contained in U.S. Const., Amend. XIV and N.C. Const., Art. I, § 19. Craig v. Buncombe

County Bd. of Educ., 80 N.C. App. 683, 343 S.E.2d 222, appeal dismissed, 318 N.C. 285, 348 S.E.2d 138 (1986).

Suspension from Entire System. — The grant of authority to suspend or expel in this section is not expressly limited to suspensions from the regular classroom, but contemplates suspension from the entire system. In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987).

The public schools have no affirmative duty to provide an alternate educational program for suspended students, in the absence of a legislative mandate. In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987).

Court Limited to Available Dispositional Alternatives. — When a student has been lawfully suspended or expelled pursuant to this section and the school has not provided a suitable alternative educational forum, court-ordered public school attendance is not a dispositional alternative available to the juvenile court judge, absent a voluntary reconsideration of or restructuring of the suspension by the school board to allow the student's restoration to an educational program within its system. In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987).

The primary goal of suspension and expulsion is the protection of the student body. State v. Davis, 126 N.C. App. 415, 485 S.E.2d 329 (1997).

Substantial evidence supported school board's decision to suspend a student for disruptive behavior, hazing, and disorderly conduct where the student pulled a classmate's pants down in front of other people, exposing her buttocks; the principal testified that having the student present while others talked about the incident could have created a disruption to the learning environment. Alexander v. Cumberland County Bd. of Educ., 171 N.C. App. 649, 615 S.E.2d 408, 2005 N.C. App. LEXIS 1366 (2005).

Appeal of Order Reversing Suspension. — Schools in North Carolina are authorized to suspend students for periods of times in excess of 10 school days but not exceeding the time remaining in the school year; thus, school board's appeal of a trial court's reversal of its decision to suspend a student was moot because, even if an appellate court were to have reversed the trial court's decision, the board would have had no authority to re-suspend the student since the school year had expired. J.S.W. v. Lee County Bd. of Educ., 167 N.C. App. 101, 604 S.E.2d 336, 2004 N.C. App. LEXIS 2075 (2004).

Cited in Graham v. Mock, 143 N.C. App. 315, 545 S.E.2d 263, 2001 N.C. App. LEXIS 275 (2001); In re Roberts, 150 N.C. App. 86, 563 S.E.2d 37, 2002 N.C. App. LEXIS 389 (2002); Copper v. Denlinger, — N.C. App. —, 667 S.E.2d 470, 2008 N.C. App. LEXIS 1817 (2008).

§ 115C-391.1. Permissible use of seclusion and restraint.

(a) It is the policy of the State of North Carolina to:

(1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.

(2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

(3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.

(4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.

(5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

(b) The following definitions apply in this section:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.

(2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

a. Significant physical harm, such as tissue damage, physical illness, or death.

b. Serious, foreseeable long-term psychological impairment.

c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.

(3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

(4) "IEP" means a student's Individualized Education Plan.

(5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

(6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.

(7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

(8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.

(9) "School personnel" means:

a. Employees of a local board of education.

b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.

c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.

(10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:

a. Physically prevented from leaving by locking hardware or other means.

b. Not capable of leaving due to physical or intellectual incapacity.

(11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

(c) Physical Restraint:

(1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:

a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.

e. As reasonably needed to escort a student safely from one area to another.

f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.

g. As reasonably needed to prevent imminent destruction to school or another person's property.

(2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.

(3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

(d) Mechanical Restraint:

(1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:

a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.

b. When using seat belts or other safety restraints to secure students during transportation.

c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.

d. As reasonably needed for self-defense.

e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

(2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

(e) Seclusion:

(1) Seclusion of students by school personnel may be used in the following circumstances:

a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.

b. As reasonably needed to maintain order or prevent or break up a fight.

c. As reasonably needed for self-defense.

d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.

e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and

1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.

2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.

3. The space in which the student is confined has been approved for such use by the local education agency.

4. The space is appropriately lighted.

5. The space is appropriately ventilated and heated or cooled.

6. The space is free of objects that unreasonably expose the student or others to harm.

(2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.

(3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

(4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

(f) Isolation. — Isolation is permitted as a behavior management technique provided that:

(1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.

(2) The duration of the isolation is reasonable in light of the purpose of the isolation.

(3) The student is reasonably monitored while in isolation.

(4) The isolation space is free of objects that unreasonably expose the student or others to harm.

(g) Time-Out. — Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.

(h) Aversive Procedures. — The use of aversive procedures as defined in this section is prohibited in public schools.

(i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures governing discipline under G.S. 115C-391(a).

(j) Notice, Reporting, and Documentation.

(1) Notice of procedures. — Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.

(2) Notice of specified incidents:

a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.
2. Any prohibited use of mechanical restraint.
3. Any use of physical restraint resulting in observable physical injury to a student.
4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.

(3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.

(4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:

a. The date, time of day, location, duration, and description of the incident and interventions.

b. The events or events that led up to the incident.

c. The nature and extent of any injury to the student.

d. The name of a school employee the parent or guardian can contact regarding the incident.

(5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense. (2005-205, s. 2; 2006-264, s. 58.)

Editor's Note. — Session Laws 2005-205, s. 1, provides: "This act shall be known as the 'Deborah Greenblatt Act'".

Session Laws 2005-205, s. 7, makes this section effective July 1, 2006.

§ 115C-392. Appeal of disciplinary measures.

Appeals of disciplinary measures are subject to the provisions of G.S. 115C-45(c). (1981, c. 423, s. 1.)

§§ 115C-393 through 115C-397: Reserved for future codification purposes.

Article 27A.

Management and Placement of Disruptive Students.

§ 115C-397.1. Management and placement of disruptive students.

If, after a teacher has requested assistance from the principal two or more times due to a student's disruptive behavior, the teacher finds that the student's disruptive behavior continues to interfere with the academic achievement of that student or other students in the class, then the teacher may refer the matter to a school-based committee. The teacher may request that additional classroom teachers participate in the committee's proceedings. For the purposes of this section, the committee shall notify the student's parent, guardian, or legal custodian and shall encourage that person's participation in the proceedings of the committee concerning the student. Nothing in this section requires a student to be screened, evaluated, or identified as a child with a disability under Article 9 of this Chapter. The committee shall review the matter and shall take one or more of the following actions: (i) advise the teacher on managing the student's behavior more effectively, (ii) recommend to the principal the transfer of the student to another class within the school, (iii) recommend to the principal a multidisciplinary evaluation of the student, (iv) recommend to the principal that the student be assigned to an alternative learning program, or (v) recommend to the principal that the student receive any additional services that the school or the school unit has the resources to provide for the student. If the principal does not follow the recommendation of the committee, the principal shall provide a written explanation to the committee, the teacher who referred the matter to the committee, and the superintendent, of any actions taken to resolve the matter and of the reason the principal did not follow the recommendation of the committee.

This section shall be in addition to the supplemental to disciplinary action taken in accordance with any other law. The recommendation of the committee is final and shall not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student to refer a disciplinary matter to this committee or to have the matter of the student's behavior referred to this committee before any discipline is imposed on the student. (1997-443, s. 8.29(b); 2006-69, s. 3(m).)

ARTICLE 28.

Student Liability.

§ 115C-398. Damage to school buildings, furnishings, textbooks.

Students and their parents or legal guardians may be liable for damage to school buildings, furnishings and textbooks pursuant to the provisions of G.S. 115C-523, 115C-100 and 14-132. (1981, c. 423, s. 1; 1985, c. 581, s. 3.)

§ 115C-399. Trespass on or damage to school bus.

Any person who willfully trespasses upon or damages a school bus may be liable pursuant to the provisions of G.S. 14-132.2. (1981, c. 423, s. 1.)

Legal Periodicals. — For survey of 1981 tort law, see 60 N.C.L. Rev. 1465 (1982).

ARTICLE 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-400. School personnel to report child abuse.

Any person who has cause to suspect child abuse or neglect has a duty to report the case of the child to the Director of Social Services of the county, as provided in Article 3 of Chapter 7B of the General Statutes. (1981, c. 423, s. 1; 1998-202, s. 13(bb).)

CASE NOTES

School System Held Not Liable for Principal's Report. — In an action for malicious prosecution, defamation, intentional infliction of emotional distress, and negligence brought by a substitute teacher against a school system, the school system was held not liable where evidence established that the principal's reports were an accurate representation of the students' complaints, and the principal clearly acted in good faith. Davis v. Durham City Schools, 91 N.C. App. 520, 372 S.E.2d 318 (1988).

Abuse by Teacher. — Abuse by a teacher does not fall under the mandatory reporting duty. Ostwalt v. Charlotte-Mecklenburg Bd. of Educ., 614 F. Supp. 2d 603, 2008 U.S. Dist. LEXIS 104102 (W.D.N.C. 2008).

OPINIONS OF ATTORNEY GENERAL

Person Reporting Must Be Person Suspecting Child Abuse. — This section requires the person who has cause to suspect child abuse to be the person to report to Director of Social Services of the county. However, the statute does not prohibit that person from making an additional report of the suspected abuse to a designated person in the school system. See opinion of Attorney General to Mr. Ernest H. Morton, Jr. Morton, Grigg & Phillips, LLP, 1997 N.C.A.G. 62 (10/14/97).

G.S. 7A-543 (see now G.S. 7B-301) and this section did not prohibit 19 schools in the same county school system from hav-

ing the same contact person to receive and report cases of suspected child abuse. See opinion of Attorney General to Mr. Ernest H. Morton, Jr. Morton, Grigg & Phillips, LLP, 1997 N.C.A.G. 62 (10/14/97).

§ 115C-401. School counseling inadmissible evidence.

Information given to a school counselor to enable him to render counseling services may be privileged as provided in G.S. 8-53.4. (1981, c. 423, s. 1.)

§ 115C-401.1. Prohibition on the disclosure of information about students.

(a) It is unlawful for a person who enters into a contract with a local board of education or its designee to sell any personally identifiable information that is obtained from a student as a result of the person's performance under the contract. This prohibition does not apply if the person obtains the prior written authorization of the student's parent or guardian. This authorization shall include the parent's or guardian's original signature. The person shall not solicit this authorization and signature through the school's personnel or equipment or on school grounds.

(b) The following definitions apply in this section:

(1) "Contract" means a contract for the provision of goods or services.

(2) "Personally identifiable information" means any information directly related to a student, including the student's name, birthdate, address, social security number, individual purchasing behavior or preferences, parents' names, telephone number, or any other information or identification number that would provide information about a specific student.

(3) "Sell" means sell or otherwise use for a business or marketing purpose.

(c) A violation of subsection (a) of this section shall be punished as a Class 2 misdemeanor, and when the defendant is an organization as defined in G.S. 15A-773(c) the fine shall be five thousand dollars ($5,000) for the first violation, ten thousand dollars ($10,000) for a second violation, and twenty-five thousand dollars ($25,000) for a third or subsequent violation.

(d) Nothing in this section shall preclude the enforcement of civil remedies as otherwise provided by law.

(e) Nothing in this section prohibits the identification and disclosure of directory information in compliance with federal law and local board of education policy or procedure. (2001-500, s. 1.)

§ 115C-402. Student records; maintenance; contents; confidentiality.

(a) The official record of each student enrolled in North Carolina public schools shall be permanently maintained in the files of the appropriate school after the student graduates, or should have graduated, from high school unless the local board determines that such files may be filed in the central office or other location designated by the local board for that purpose.

(b) The official record shall contain, as a minimum, adequate identification data including date of birth, attendance data, grading and promotion data, and such other factual information as may be deemed appropriate by the local board of education having jurisdiction over the school wherein the record is maintained. Each student's official record also shall include notice of any suspension for a period of more than 10 days or of any expulsion under G.S. 115C-391 and the conduct for which the student was suspended or expelled. The superintendent or the superintendent's designee shall expunge from the record the notice of suspension or expulsion if the following criteria are met:

(1) One of the following persons makes a request for expungement:
  a. The student's parent, legal guardian, or custodian.
  b. The student, if the student is at least 16 years old or is emancipated.

(2) The student either graduates from high school or is not expelled or suspended again during the two-year period commencing on the date of the student's return to school after the expulsion or suspension.

(3) The superintendent or the superintendent's designee determines that the maintenance of the record is no longer needed to maintain safe and orderly schools.

(4) The superintendent or the superintendent's designee determines that the maintenance of the record is no longer needed to adequately serve the child.

(c) Notwithstanding subdivision (b)(1) of this section, a superintendent or the superintendent's designee may expunge from a student's official record any notice of suspension or expulsion provided all other criteria under subsection (b) are met.

(d) Each local board's policy on student records shall include information on the procedure for expungement under subsection (b) of this section.

(e) The official record of each student is not a public record as the term "public record" is defined by G.S. 132-1. The official record shall not be subject to inspection and examination as authorized by G.S. 132-6.

(f) The actual address and telephone number of a student who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes or a student with a parent who is a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall be kept confidential from the public and shall not be disclosed except as provided in Chapter 15C of the General Statutes. (1975, c. 624, ss. 1, 2; 1981, c. 423, s. 1; 1985, c. 268; c. 416; 1997-443, s. 8.29(s); 2001-195, s. 1; 2002-171, s. 6.)

CASE NOTES

Confidentiality and Right of Confrontation. — Defendant's confrontation rights under N.C. Const. art. I, § 23 were not violated when the trial court refused to allow defendant to cross-examine the witness about the witness's disciplinary record, as there were confidentiality concerns about the record pursuant to G.S. 115C-402, and defendant failed to show how the disciplinary record was relevant to impeach the witness's credibility under G.S. 8C-1, N.C. R. Evid. 608(b). State v. Oliver, 159 N.C. App. 451, 584 S.E.2d 86, 2003 N.C. App. LEXIS 1494 (2003).

§ 115C-403. Flagging and verification of student records; notification of law enforcement agencies.

(a) Upon notification by a law enforcement agency or the North Carolina Center for Missing Persons of a child's disappearance, the superintendent of a local school administrative unit or his designee shall flag or mark the record of any child who is currently or was previously enrolled in a school of that unit and who is reported as missing. The flag or mark shall be made in such a manner that when a copy of or information regarding the record is requested, school personnel are alerted to the fact that the record is that of a missing child.

Before providing a copy of the school record or other information concerning the child whose record is flagged pursuant to this section, the superintendent or his designee shall notify the agency that requested that the record be flagged of every inquiry made concerning the flagged record, and shall provide a copy to the agency of any written request for information concerning the flagged record.

(b) When any child transfers from one school system to another school system, the receiving school shall, within 30 days of the child's enrollment, obtain the child's record from the school from which the child is transferring. If the child's parent, custodian, or guardian provides a copy of the child's record from the school from which the child is transferring, the receiving school shall, within 30 days of the child's enrollment, request written verification of the school record by contacting the school or institution named on the transferring child's record. Upon receipt of a request, the principal or the principal's designee of the school from which the child is transferring shall not withhold the record or verification for any reason, except as is authorized under the Family Educational Rights and Privacy Act. Any information received indicating that the transferring child is a missing child shall be reported to the North Carolina Center for Missing Persons. (1989, c. 331, s. 1; 1998-220, s. 12.)

OPINIONS OF ATTORNEY GENERAL

Sharing of Educational Records. — G.S. 115C-109 (repealed), 115C-110(a) (repealed) and subsection (b) of this section represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

§ 115C-404. Use of juvenile court information.

(a) Written notifications received in accordance with G.S. 7B-3101 and information gained from examination of juvenile records in accordance with G.S. 7B-3100 are confidential records, are not public records as defined under G.S. 132-1, and shall not be made part of the student's official record under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall shred, burn, or otherwise destroy documents received in accordance with G.S. 7B-3100 to protect the confidentiality of the information when the principal receives notification that the court dismissed the petition under G.S. 7B-2411, the court transferred jurisdiction over the student to superior court under G.S. 7B-2200, or the court granted the student's petition for expunction of the records. The principal shall shred, burn, or otherwise destroy all information gained from examination of juvenile records in accordance with G.S. 7B-3100 when the principal finds that the school no longer needs the information to protect the safety of or to improve the educational opportunities for the student or others. In no case shall the principal make a copy of these documents.

(b) Documents received under this section shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee, in accordance with G.S. 115C-325(e)(1)i.

(c) If the student graduates, withdraws from school, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal shall return all documents not destroyed in accordance with subsection (a) of this section to the juvenile court counselor and, if applicable, shall provide the counselor with the name and address of the school to which the student is transferring. (1997-443, s. 8.29(f); 1998-202, ss. 8, 13(cc); 1998-217, s. 12; 2000-140, s. 25.)

§§ 115C-405, 115C-406: Reserved for future codification purposes.

ARTICLE 29A.

Policy Prohibiting Use of Tobacco Products.

§ 115C-407. Policy prohibiting tobacco use in school buildings, grounds, and at school-sponsored events.

(a) Not later than August 1, 2008, local boards of education shall adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy shall further prohibit the use of all tobacco products by persons attending a school-sponsored event at a location not listed in this subsection when in the presence of students or school personnel or in an area where smoking is otherwise prohibited by law.

(b) The policy shall include at least all of the following elements:

(1) Adequate notice to students, parents, the public, and school personnel of the policy.

(2) Posting of signs prohibiting at all times the use of tobacco products by any person in and on school property.

(3) Requirements that school personnel enforce the policy.

(c) The policy may permit tobacco products to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product.

(d) The North Carolina Health and Wellness Trust Fund Commission shall work with local boards of education to provide assistance with the implementation of this policy including providing information regarding smoking cessation and prevention resources. Nothing in this section, G.S. 143-595 through G.S. 143-601, or any other section prohibits a local board of education from adopting and enforcing a more restrictive policy on the use of tobacco in school buildings, in school facilities, on school campuses, or at school-related or school-sponsored events, and in or on other school property. (2003-421, s. 1; 2007-236, s. 1.)

§§ 115C-407.1 through 115C-407.4: Reserved for future codification purposes.

ARTICLE 29B.

Interstate Compact on Educational Opportunity for Military Children.

§ 115C-407.5. Interstate Compact on Educational Opportunity for Military Children.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I.

PURPOSE.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE II.

DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. § 12301, et. seq. and 10 U.S.C. § 12401, et. seq.

B. "Children of military families" means: a school-aged child(ren), enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

C. "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders though six (6) months after return to their home station.

E. "Education(al) records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

I. "Member state" means: a state that has enacted this compact.

J. "Military installation" means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Non-member state" means: a state that has not enacted this compact.

L. "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

Q. "Transition" means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed service(s)" means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. "Veteran" means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

ARTICLE III.
APPLICABILITY.

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. § 12301, et. seq. and 10 U.S.C. § 12401, et. seq.;
2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and
3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the National Guard and military reserves;
2. members of the uniformed services now retired, except as provided in Section A;
3. veterans of the uniformed services, except as provided in Section A; and other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV.
EDUCATIONAL RECORDS & ENROLLMENT.

A. Unofficial or "hand-carried" education records — In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts — Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations — Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and First grade entrance age — Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V.
PLACEMENT & ATTENDANCE.

A. Course placement — When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement — The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services — 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility — Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities — A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI.
ELIGIBILITY.

A. Eligibility for enrollment — Children of military families shall be eligible for enrollment in the public schools of North Carolina pursuant to the provisions of G.S. 115C-366, including the provisions of G.S. 115C-366(a3) that provides for admission, without the payment of tuition, of children of military families not domiciled within the school district, provided that the affidavits provided for in that section and other specified conditions are met.

B. Eligibility for extracurricular participation — State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII.
GRADUATION.

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. Waiver requirements — Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams — States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during Senior year — Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

ARTICLE VIII.
STATE COORDINATION.

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

ARTICLE IX
INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.
2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.
3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.
4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime, or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

ARTICLE X.
POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process. Any action to enforce compliance with the compact provisions by the Interstate Commission shall be brought against a member state only.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;
2. Establishing an executive committee, and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;
4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a`chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:
    a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;
    b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
    c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.
2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.
2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.
3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority — The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure — Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a Rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as rules promulgated under the Administrative Procedures Act as found in Chapter 150B of the North Carolina General Statutes.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.
3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination — If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.
2. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by

the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.
6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.
7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.
2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate

Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV
MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI
WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.
2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.
3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.
4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws
  1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.
  2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact
  1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.
  2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.
  3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. (2008-185, s. 1; 2009-281, s. 1.)

Editor's Note. — G.S. 115C-407.8 provides that "This Article becomes effective July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later." The Revisor of Statutes has been informed that this contingency has been met, and that the Article became effective July 1, 2008.

Session Laws 2008-185, s. 3, provides: "It is the goal of the General Assembly to ensure that low-wealth schools are enabled to administer and comply with the requirements of the Interstate Compact on Educational Opportunity for Military Children. It is the intent of the General Assembly to appropriate funds in the sum of twenty-five thousand dollars ($25,000) annually to the Department of Public Instruction to offset costs for low-wealth schools for administration of the Interstate Compact on Educational Opportunity for Military Children, beginning with the 2009-2010 school year or the enactment of the compact, whichever occurs later."

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision C.1 of Article III of the Compact.

§ 115C-407.6. Creation of a State Council.

The State Board of Education shall establish a State Council, as required by Article VIII of the compact. The membership of the State Council shall include, at a minimum, the Superintendent of Public Instruction, a superintendent of a local school administrative unit with a high concentration of military children, a representative from a military installation, a representative of the executive branch of government, a representative of the North Carolina School Boards Association, a representative of the North Carolina Association of School Administrators, a member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and a member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. (2008-185, s. 1.)

§ 115C-407.7. Appointment of compact commissioner.

As required by Article VIII of the compact, the Governor shall appoint as compact commissioner a licensed North Carolina attorney who represents at least one local board of education, with preference given to an attorney representing a local board of education with a high concentration of military children or an attorney familiar with military issues. The compact commissioner shall be responsible for the administration and management of the State's participation in the compact. (2008-185, s. 1.)

§ 115C-407.8. Effective date of compact.

This Article becomes effective July 1, 2008, or upon enactment of the compact into law by nine other states, whichever date occurs later. (2008-185, s. 1.)

Editor's Note. — The Revisor of Statutes has been informed that the contingency specified in this section has been met, and that the Article became effective July 1, 2008.

§§ 115C-407.9 through 115C-407.14: Reserved for future codification purposes.

ARTICLE 29C.

School Violence Prevention.

§ 115C-407.15. Bullying and harassing behavior.

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

(1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

(b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.

(d) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

(e) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official. (2009-212, s. 1; 2009-570, s. 39.)

Editor's Note. — Session Laws 2009-212, s. 1, enacted this Article as Article 29B (G.S. 115C-407.5 through 115C-407.8). Session Laws 2009-570, s. 39(a), recodified the article as Article 29C. Session Laws 2009-570, s. 39(b), recodified this section as G.S. 115C-407.9 and it was subsequently renumbered G.S. 115C-407.15 at the direction of the Revisor of Statutes.

Session Laws 2009-212, s. 2, made this Article effective June 30, 2009, and applicable, unless otherwise provided in G.S. 115C-407.16, beginning with the 2009-2010 school year.

§ 115C-407.16. Policy against bullying or harassing behavior.

(a) Before December 31, 2009, each local school administrative unit shall adopt a policy prohibiting bullying or harassing behavior.

(b) The policy shall contain, at a minimum, the following components:

(1) A statement prohibiting bullying or harassing behavior.

(2) A definition of bullying or harassing behavior no less inclusive than that set forth in this Article.

(3) A description of the type of behavior expected for each student and school employee.

(4) Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.

(5) A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously. This shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

(6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation.

(7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.

(8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.

(c) Nothing in this Article shall prohibit a local school administrative unit from adopting a policy that includes components beyond the minimum components provided in this section or that is more inclusive than the requirements of this Article.

(d) Notice of the local policy shall appear in any school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook.

(e) Information regarding the local policy against bullying or harassing behavior shall be incorporated into a school's employee training program.

(f) To the extent funds are appropriated for these purposes, a local school administrative unit shall, by March 1, 2010, provide training on the local policy to school employees and volunteers who have significant contact with students. (2009-212, s. 1; 2009-570, s. 39.)

Editor's Note. — Session Laws 2009-212, s. 1, enacted this Article as Article 29B (G.S. 115C-407.5 through 115C-407.8). Session Laws 2009-570, s. 39(a), recodified the article as Article 29C. Session Laws 2009-570, s. 39(b) recodified this section as G.S. 115C-407.10, and it was subsequently renumbered as G.S. 115C-407.16 at the direction of the Revisor of Statutes.

Session Laws 2009-212, s. 2 made this section effective June 30, 2009, and applicable, unless otherwise provided in this section, beginning with the 2009-2010 school year.

§ 115C-407.17. Prevention of school violence.

Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior. (2009-212, s. 1; 2009-570, s. 39.)

Editor's Note. — Session Laws 2009-212, s. 1, enacted this Article as Article 29B (G.S. 115C-407.5 through 115C-407.8). Session Laws 2009-570, s. 39(a), recodified the article as Article 29C. Session Laws 2009-570, s. 39(b) recodified this section as G.S. 115C-407.11, and it was subsequently renumbered as G.S. 115C-407.17 at the direction of the Revisor of Statutes.

Session Laws 2009-212, s. 2 made this section effective June 30, 2009, and applicable, unless otherwise provided in G.S. 115C-407.16, beginning with the 2009-2010 school year.

§ 115C-407.18. Construction of this Article.

(a) This Article shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

(b) This Article shall not be interpreted to prevent a victim of bullying or harassing behavior from seeking redress under any other available law, either civil or criminal.

(c) Nothing in this Article shall be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.

(d) The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision.

(e) The provisions of this Article shall be liberally construed to give effect to its purposes.

(f) Nothing in this act shall be construed to create any classification, protected class, suspect category, or preference beyond those existing in present statute or case law. (2009-212, s. 1; 2009-570, s. 39.)

Editor's Note. — Session Laws 2009-212, s. 1, enacted this Article as Article 29B (G.S. 115C-407.5 through 115C-407.8). Session Laws 2009-570, s. 39(a), recodified the article as Article 29C. Session Laws 2009-570, s. 39(b) recodified this section as G.S. 115C-407.12, and it was subsequently renumbered as G.S. 115C-407.18 at the direction of the Revisor of Statutes.

Session Laws 2009-212, s. 2 made this section effective June 30, 2009, and applicable, unless otherwise provided in G.S. 115C-407.16, beginning with the 2009-2010 school year.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 30.

Financial Powers of the State Board of Education.

§ 115C-408. Funds under control of the State Board of Education.

(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Section 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

(b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study.

It is the policy of the State of North Carolina that the facilities requirements for a public education system will be met by county governments.

It is the intent of the 1983 General Assembly to further clarify and delineate the specific financial responsibilities for the public schools to be borne by State and local governments. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 12.)

Cross References. — As to powers and duties of the Board generally, see G.S. 115C-12.

Legal Periodicals. — For note on Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997), see 76 N.C.L. Rev. 1481 (1998).

CASE NOTES

Taken together, under G.S. 115C-12, 115C-408, and 115C-451, the powers of the North Carolina Board of Education (BOE) are limited to the control, administration, and disbursement of state and federal moneys, while the state superior courts maintain jurisdiction to hear disputes between charter schools and their local boards of education; thus, a superior court and not the BOE had jurisdiction to consider the claim of a group of charter schools that a local board of education and its superintendent had violated G.S. 115C-238.29H(b) by failing to transfer to the charter schools a pro rata share of the per pupil moneys included in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Equal Funding Not Required. — Although the State Constitution requires that access to a sound basic education be provided equally in every school district, the equal opportunities clause of Article IX, Section 2(1) does not require substantially equal funding or educational advantages in all school districts. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

Sound Basic Education. — Article I, Section 15 and Article IX, Section 2 of the North

Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

For purposes of our Constitution, a sound basic education will provide the student with at least: (1) sufficient ability to read, write, and speak English and a sufficient knowledge of fundamental math and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices regarding personal issues or issues that affect the community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; (4) and sufficient academic and social skills to enable the student to compete on an equal basis with others in further formal education or gainful employment. Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 1996 N.C. App. LEXIS 201 (1997).

County board of education can assign students to year-round schools without parental consent because the General Assembly has conferred broad, specific, and sole authority upon local school boards to determine school calendars; the more efficient use by year-round calendar schools of existing school facilities complies with the public policy of the State to create a public school system in the most cost-effective manner while ensuring a sound basic education for all North Carolina children. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 675 S.E.2d 345, 2009 N.C. LEXIS 351 (2009).

Duty to Provide School Facilities Is that of Counties. — G.S. 153A-102 did not authorize a county to impose a "school impact fee" upon new residential construction; its plain language limited the power to fix only those fees charged by county officers and employees for performing services or duties permitted or required by law, and under G.S. 115C-408(b), it was the duty of a county itself, not its officers or employees, to provide adequate school facilities. Furthermore, the statute's textual limitations on the power to charge fees indicated that the services were routine, document-oriented tasks. Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

Cited in Guthrie v. North Carolina State Ports Auth., 56 N.C. App. 68, 286 S.E.2d 823 (1982); Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

§ 115C-409. Power to accept federal funds and aid.

(a) The Board is authorized to accept, receive, use or reallocate to local school administrative units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.

(b) The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-410. Power to accept gifts and grants.

The Board is authorized to accept, receive, use, or reallocate to local school administrative units any gifts, donations, grants, bequests, or other forms of voluntary contributions. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c.

969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-411. Authority to invest school funds.

The Board is authorized to direct the State Treasurer to invest in interest-bearing securities any funds which may come into its possession, and which it deems expedient to invest, as other funds of the State are now or may be hereafter invested. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-412. Power to purchase at mortgage sales.

The State Board of Education is authorized to purchase at public sale any land upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district theretofore constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-413. Power to adjust debts.

The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds, or other evidence of indebtedness without payment, when, in the discretion of said Board, it appears that it is proper to do so. The Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-414. State Board as successor to powers of abolished commissions and boards.

The Board shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina; and to all the powers, functions, duties, and property of all abolished commissions and boards including the State School Commission, the State Textbook Commission, the Department of Health and Human Services, and the State Board of Commercial Education, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745;

1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1997-443, s. 11A.122.)

§ 115C-415: Repealed by Session Laws 1997-18, s. 15(*l*).

§ 115C-416. Power to allot funds for teachers and other personnel.

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher loan from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to local school administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the local school administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for school social workers.

The Board is further authorized, in its discretion, to allot teaching personnel to local school administrative units for experimental programs and purposes.

The Board may also allot teaching and other positions, within funds available, to local school administrative units to allow local units to place personnel occupying those positions in private hospitals and treatment facilities for the limited purpose of providing education to students confined to those institutions. The Board shall adopt rules to ensure that any such placements do not contribute to the profitability of private institutions and that they are otherwise in accordance with State and federal law. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1985, c. 686, s. 1; 1989 (Reg. Sess., 1990), c. 1066, s. 92.)

§ 115C-417. Availability of funds allocated for staff development.

Funds allocated by the State Board of Education for staff development at the local level shall become available for expenditure on July 1 of each fiscal year and shall remain available for expenditure until December 31 of the subsequent fiscal year. (1991 (Reg. Sess., 1992), c. 900, s. 63(c); 1997-443, s. 8.21.)

§ 115C-418: Repealed by Session Laws 1993 (Regular Session, 1994), c. 677, s. 15.

§§ 115C-419 through 115C-421: Reserved for future codification purposes.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

§ 115C-422. Short title.

This Article may be cited as "The School Budget and Fiscal Control Act." (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-423. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Budget" is a plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year.

(2) "Budget resolution" is a resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed and a budget resolution is adopted.

(4) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.

(5) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions or limitations.

(6) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 167; 2006-203, s. 34.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 34, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (6).

CASE NOTES

Fund. — County board of education in a budgetary dispute with a county board of commissioners was required to present evidence of the amount of funding needed for the local current expense fund which included the funds provided from the North Carolina State Public School Fund to provide for the current operating expenses of the county schools for the fiscal year concerning the budgetary dispute. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Public school system needed to create a special fund where it sought to carry on specific activities or attain certain objectives after it received money from the county board of commissioners to operate it schools. Where it merely placed that money in the local current expense fund, such as in the case of its preschool program, it was required to apportion those funds between itself and the charter schools pursuant to G.S. 115C-238.29(H)(b). Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-424. Uniform system; conflicting laws and local acts superseded.

It is the intent of the General Assembly by enactment of this Article to prescribe for the public schools a uniform system of budgeting and fiscal control. To this end, all provisions of general laws and local acts in effect as of July 1, 1976, and in conflict with the provisions of this Article are repealed except local acts providing for the levy or for the levy and collection of school supplemental taxes. No local act enacted or taking effect after July 1, 1976, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Applicability. — Since G.S. 105-472(b)(2) and G.S. 115C-430 are not in conflict, the trial court did not err in concluding that the repealer statute, this section did not apply. Banks v. County of Buncombe, 128 N.C. App. 214, 494 S.E.2d 791 (1998), aff'd, 348 N.C. 687, 500 S.E.2d 666 (1998).

Meaning of "Local Current Expense Appropriation." — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

Applied in Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Part 2. Budget.

§ 115C-425. Annual balanced budget resolution.

(a) Each local school administrative unit shall operate under an annual balanced budget resolution adopted and administered in accordance with this Article. A budget resolution is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year. The budget resolution shall cover one fiscal year.

(b) It is the intent of this Article that all moneys received and expended by a local school administrative unit should be included in the school budget resolution. Therefore, notwithstanding any other provisions of law, after July

1, 1976, no local school administrative unit may expend any moneys, regardless of their source (including moneys derived from federal, State, or private sources), except in accordance with a budget resolution adopted pursuant to this Article.

(c) Subsection (b) of this section does not apply to funds of individual schools, as defined in G.S. 115C-448. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1993, c. 179, s. 1.)

§ 115C-426. Uniform budget format.

(a) The State Board of Education, in cooperation with the Local Government Commission, shall cause to be prepared and promulgated a standard budget format for use by local school administrative units throughout the State.

(b) The uniform budget format shall be organized so as to facilitate accomplishment of the following objectives: (i) to enable the board of education and the board of county commissioners to make the local educational and local fiscal policies embodied therein; (ii) to control and facilitate the fiscal management of the local school administrative unit during the fiscal year; and (iii) to facilitate the gathering of accurate and reliable fiscal data on the operation of the public school system throughout the State.

(c) The uniform budget format shall require the following funds:

(1) The State Public School Fund.
(2) The local current expense fund.
(3) The capital outlay fund.

In addition, other funds may be required to account for trust funds, federal grants restricted as to use, and special programs. Each local school administrative unit shall maintain those funds shown in the uniform budget format that are applicable to its operations.

(d) The State Public School Fund shall include appropriations for the current operating expenses of the public school system from moneys made available to the local school administrative unit by the State Board of Education.

(e) The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners. These appropriations shall be funded by revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution, moneys made available to the local school administrative unit by the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, State money disbursed directly to the local school administrative unit, and other moneys made available or accruing to the local school administrative unit for the current operating expenses of the public school system.

(f) The capital outlay fund shall include appropriations for:

(1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.
(2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.
(3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.

(4) The acquisition of school buses as additions to the fleet.
(5) The acquisition of activity buses and other motor vehicles.
(6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans, specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

No contract for the purchase of a site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115C-431 shall, insofar as the same may be applicable, be used to settle the disagreement.

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

(g) Other funds shall include appropriations for such purposes funded from such sources as may be prescribed by the uniform budget format. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

CASE NOTES

Legislative Intent. — The General Assembly clearly intended that the operating expenses of the public school systems be included in a single local expense fund which expressly includes penal fines and forfeitures and supplemental taxes levied by or on behalf of the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

What Is Included in Local Current Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense funded — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

County board of education in a budgetary dispute with a county board of commissioners was required to present evidence of the amount of funding needed for the local current expense fund which included the funds provided from the North Carolina State Public School Fund to provide for the current operating expenses of the county schools for the fiscal year concerning the budgetary dispute. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Fund balance carried over from a previous fiscal year constitutes moneys in a local board of education's local current expense fund; thus, where a local board of education had a balance carry over, under G.S. 115C-238.29H, the carried over money had to be shared with charter schools within the local board's jurisdiction. Sugar Creek Charter Sch., Inc. v. Charlotte-

Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

Charter School Funding. — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

Public school system was required to follow the uniform budget format of G.S. 115C-426 in allocating funds for various projects after those funds were made available to the system by the county board of commissioners. Too, the system was required to appropriate those funds between itself and the charter schools where it placed funds in the local current expense fund, such as in the case of preschool program funds, or it should have placed funds in the local current expense fund, such as where the board gave it money to improve three high schools. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Cited in Save our Schs. of Bladen County, Inc. v. Bladen County Bd. of Educ., 140 N.C. App. 233, 535 S.E.2d 906, 2000 N.C. App. LEXIS 1109 (2000).

§ 115C-426.1. Vending facilities.

Moneys received by a local school administrative unit on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 168.)

§ 115C-426.2. Joint planning.

In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article. (1995 (Reg. Sess., 1996), c. 666, s. 2.)

§ 115C-427. Preparation and submission of budget and budget message.

(a) Before the close of each fiscal year, the superintendent shall prepare a budget for the ensuing year for consideration by the board of education. The budget shall comply in all respects with the limitations imposed by G.S. 115C-432.

(b) The budget, together with a budget message, shall be submitted to the board of education not later than May 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the educational goals fixed by the budget for the budget year, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in educational or fiscal policy. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

CASE NOTES

No Error in Dismissal of Claims Against Superintendent. — Trial court did not err in dismissing plaintiffs' claims against superintendent; although plaintiffs alleged superintendent's representations to both defendant boards "were grossly overstated" and "without foundation in fact," plaintiffs did not allege superintendent was in a decision-making position as to acquisition of the Square D facility. As a matter of law, a superintendent does not vote on appropriations. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-428. Filing and publication of the budget; budget hearing.

(a) On the same day that he submits the budget to the board of education, the superintendent shall file a copy of it in his office where it shall remain available for public inspection until the budget resolution is adopted. He may also publish a statement in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county that the budget has been submitted to the board of education, and is available for public inspection in the office of the superintendent of schools. The statement should also give notice of the time and place of the budget hearing authorized by subsection (b) of this section.

(b) Before submitting the budget to the board of county commissioners, the board of education may hold a public hearing at which time any persons who wish to be heard on the school budget may appear. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-429. Approval of budget; submission to county commissioners; commissioners' action on budget.

(a) Upon receiving the budget from the superintendent and following the public hearing authorized by G.S. 115C-428(b), if one is held, the board of education shall consider the budget, make such changes therein as it deems advisable, and submit the entire budget as approved by the board of education to the board of county commissioners not later than May 15, or such later date as may be fixed by the board of county commissioners.

(b) The board of county commissioners shall complete its action on the school budget on or before July 1, or such later date as may be agreeable to the board of education. The commissioners shall determine the amount of county revenues to be appropriated in the county budget ordinance to the local school administrative unit for the budget year. The board of county commissioners may, in its discretion, allocate part or all of its appropriation by purpose, function, or project as defined in the uniform budget format.

(c) The board of county commissioners shall have full authority to call for, and the board of education shall have the duty to make available to the board of county commissioners, upon request, all books, records, audit reports, and other information bearing on the financial operation of the local school administrative unit.

(d) Nothing in this Article shall be construed to place a duty on the board of commissioners to fund a deficit incurred by a local school administrative unit through failure of the unit to comply with the provisions of this Article or rules and regulations issued pursuant hereto, or to provide moneys lost through misapplication of moneys by a bonded officer, employee or agent of the local school administrative unit when the amount of the fidelity bond required by the board of education was manifestly insufficient. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

CASE NOTES

***Editor's Note.** — Some of the cases annotated below were decided under corresponding provisions of former Chapter 115.*

Close Consideration of Budget Requests. — County commissioners have the right, indeed the duty, to consider budget requests submitted by the board of education on a line-by-line basis. Certainly there can be no doubt but that this must be done where the requests of the board of education, if granted, would require an additional tax levy, and the statutes clearly imply this as a requirement, even where no additional tax levy is necessary. Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975).

Boards of commissioners can only fulfill their duty to the taxpayers by considering closely all budgets presented to them as requests for funds. Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975).

Apportionment of Appropriation. — Trial court should not have concluded that money that the board of commissioners gave to the public school system for a preschool program did not have to be apportioned between the system and the charter school. The money was placed in a local current expense fund, which required that the money be apportioned between the system and charter schools pursuant to G.S. 115-238.29(H)(b) and if the system did not want that result, it was obliged to create a special fund for the preschool program, which it did not do. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

Applied in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

OPINIONS OF ATTORNEY GENERAL

A school employee who serves as a member of a board of county commissioners is not prohibited from voting on the school board's budget request. There may be circumstances, however, when the school employee's vote would violate the employee's duty to vote in the public interest rather than his own interest. In those circumstances, the employee should abstain from voting. See opinion of Attorney General to Dr. Martin Eaddy, Superintendent, Lincoln County Schools, — N.C.A.G. — (July 29, 1987).

§ 115C-430. Apportionment of county appropriations among local school administrative units.

If there is more than one local school administrative unit in a county, all appropriations by the county to the local current expense funds of the units, except appropriations funded by supplemental taxes levied less than countywide pursuant to a local act of G.S. 115C-501 to 115C-511, must be apportioned according to the membership of each unit. County appropriations are properly apportioned when the dollar amount obtained by dividing the amount so appropriated to each unit by the total membership of the unit is the same for each unit. The total membership of the local school administrative unit is the unit's average daily membership for the budget year to be determined by and certified to the unit and the board of county commissioners by the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 78.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Construction with Other Provisions. — Since distribution of the residual sales taxes under G.S. 105-472(b)(2) is dependent upon the levy of ad valorem taxes within a taxing district, it does not appear that it was the intent of the legislature for this section to supersede G.S.

105-472(b)(2); therefore, the trial court properly concluded that the two statutes were not in conflict. Banks v. County of Buncombe, 128 N.C. App. 214, 494 S.E.2d 791 (1998), aff'd, 348 N.C. 687, 500 S.E.2d 666 (1998).

Fact that the North Carolina State Board of Education had certified that students who attended school in a school district lived in two counties was not a formal recognition that the school district was located in both counties and did not prevent the Board from approving a plan to merge three school systems located in one county, pursuant to G.S. 115C-68.1, without obtaining approval from county commissioners who governed an adjacent county. Kings Mt. Bd. of Educ. v. N.C. State Bd. of Educ., 159 N.C. App. 568, 583 S.E.2d 629, 2003 N.C. App. LEXIS 1509 (2003).

What Is Included in Current Local Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense fund — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations.

Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:

(1) The chair of each board or the chair's designee;
(2) The superintendent of the local school administrative unit and the county manager or either's designee;
(3) The finance officer of each board; and
(4) The attorney for each board.

Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

Unless both boards agree otherwise, or unless the boards have already resolved their dispute, the mediation shall end no later than August 1. The mediator shall have the authority to determine that an impasse exists and to discontinue the mediation. The mediation may continue beyond August 1 provided both boards agree. If both boards agree to continue the mediation beyond August 1, the board of county commissioners shall appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient to equal the local contribution to this fund for the previous year.

If the working groups reach a proposed agreement, the terms and conditions must be approved by each board. If no agreement is reached, the mediator shall announce that fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator shall not disclose any other information about the mediation. The mediator shall not make any recommendations or public statement of findings or conclusions.

The local board of education and the board of county commissioners shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.

(c) Within five days after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) An appeal may be taken to the appellate division of the General Court of Justice, and notice of appeal shall be given in writing within 10 days after entry of the judgment. All papers and records relating to the case shall be considered a part of the record on appeal. The conclusion of the school or fiscal year shall not be deemed to resolve the question in controversy between the parties while an appeal is still pending. Any final judgment shall be legally binding on the parties at the conclusion of the appellate process. The payment of any final judgment by the county in favor of the local school administrative unit shall not be considered, or used in any manner, to deny or reduce appropriations to the local school administrative unit by the county in fiscal years subsequent to the one at issue to offset such payment of a final judgment.

(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent (3/4 of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1989, c. 493, s. 2; 1995 (Reg. Sess., 1996), c. 666, s. 3; 1997-222, s. 1; 2007-92, s. 1.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 437.

CASE NOTES

Subject Matter Jurisdiction. — Superior court had jurisdiction to adjudicate a budgetary dispute between a county board of education and a board of county commissioners because the board of county commissioners was required to provide funding to the board of education and upon disagreement as to sufficient funding the board of education was authorized pursuant to G.S. 115C-431(c) to file an action against the board of county commissioners. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Mootness. — County board of commissioners filed a notice of appeal from a judgment regarding a school budget dispute that was entered in favor of a county board of education within the fiscal school year in which a budgetary dispute existed. Therefore, the appeal was pending when the fiscal year ended, and, pursuant to G.S. 115C-431(d), the appeal was not moot because the conclusion of the fiscal year did not resolve the question in controversy. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Necessary Parties. — State of North Carolina and the North Carolina Board of Education were not necessary parties to an action regarding a school budgetary dispute brought by a county board of education against a county board of commissioners pursuant to G.S. 115C-431(c). Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Findings of Trial Judge Held Inadequate Under Former Law. — See Wilson County Bd. of Educ. v. Wilson County Bd. of Comm'rs, 26 N.C. App. 114, 215 S.E.2d 412 (1975).

Trial court did not abuse its discretion or err by its denial of a county board of commissioner's motion to continue an action brought by a county board of education to resolve a budgetary dispute because of the specific timing provisions and purposes of the North Carolina School Budget and Fiscal Control Act, N.C. Gen. Stat. ch. 115C, art. 31. Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

Cited in Cumberland County Bd. of Educ. v. Cumberland County Bd. of Comm'rs, 113 N.C. App. 164, 438 S.E.2d 424 (1993); Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-432. The budget resolution; adoption; limitations; tax levy; filing.

(a) After the board of county commissioners has made its appropriations to the local school administrative unit, or after the appeal procedure set out in G.S. 115C-431 has been concluded, the board of education shall adopt a budget resolution making appropriations for the budget year in such sums as the board may deem sufficient and proper. The budget resolution shall conform to the uniform budget format established by the State Board of Education.

(b) The following directions and limitations shall bind the board of education in adopting the budget resolution:

(1) If the county budget ordinance allocates appropriations to the local school administrative unit pursuant to G.S. 115C-429(b), the school budget resolution shall conform to that allocation. The budget resolution may be amended to change allocated appropriations only in accordance with G.S. 115C-433.

(2) Subject to the provisions of G.S. 115C-429(d), the full amount of any lawful deficit from the prior fiscal year shall be appropriated.

(3) Contingency appropriations in a fund may not exceed five percent (5%) of the total of all other appropriations in that fund. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the board of education, which resolution shall be deemed an amendment to the budget resolution, not subject to G.S. 115C-429(b) and 115C-433(b), setting up or increasing an appropriation for the object of expenditure authorized. The board of education may authorize the superintendent to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditure shall be reported to the board of education at its next regular meeting and recorded in the minutes.

(4) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.

(5) The sum of estimated net revenues and appropriated fund balances in each fund shall be equal to appropriations in that fund.

(6) No appropriation may be made that would require the levy of supplemental taxes pursuant to a local act or G.S. 115C-501 to 115C-511 in excess of the rate of tax approved by the voters, or the expenditure of revenues for purposes not permitted by law.

(7) In estimating revenues to be realized from the levy of school supplemental taxes pursuant to a local act or G.S. 115C-501 to 115C-511, the estimated percentage of collection may not exceed the percentage of that tax actually realized in cash during the preceding fiscal year, or if the tax was not levied in the preceding fiscal year, the percentage of the general county tax levy actually realized in cash during the preceding fiscal year.

(8) Amounts to be realized from collection of supplemental taxes levied in prior fiscal years shall be included in estimated revenues.

(9) No appropriation may be made to or from the capital outlay fund to or from any other fund, except as permitted by G.S. 115C-433(d).

(c) If the local school administrative unit levies its own supplemental taxes pursuant to a local act, the budget resolution shall make the appropriate tax levy in accordance with the local act, and the board of education shall notify the county or city that collects the levy in accordance with G.S. 159-14.

(d) The budget resolution shall be entered in the minutes of the board of education, and within five days after adoption, copies thereof shall be filed with the superintendent, the school finance officer and the county finance officer. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 13; 1993, c. 57, s. 1.)

CASE NOTES

Cited in Save our Schs. of Bladen County, Inc. v. Bladen County Bd. of Educ., 140 N.C. App. 233, 535 S.E.2d 906, 2000 N.C. App. LEXIS 1109 (2000).

§ 115C-433. Amendments to the budget resolution; budget transfers.

(a) Subject to the provisions of subsection (b) of this section, the board of education may amend the budget resolution at any time after its adoption, in any manner, so long as the resolution as amended continues to satisfy the requirements of G.S. 115C-425 and 115C-432.

(b) If the board of county commissioners allocates part or all of its appropriations pursuant to G.S. 115C-429(b), the board of education must obtain the approval of the board of county commissioners for an amendment to the budget that (i) increases or decreases expenditures from the capital outlay fund for projects listed in G.S. 115C-426(f)(1) or (2), or (ii) increases or decreases the amount of county appropriation allocated to a purpose or function by twenty-five percent (25%) or more from the amount contained in the budget ordinance adopted by the board of county commissioners: Provided, that at its discretion, the board may in its budget ordinance specify a lesser percentage, so long as such percentage is not less than ten percent (10%).

(c) The board of education may by appropriate resolution authorize the superintendent to transfer moneys from one appropriation to another within the same fund, subject to such limitations and procedures as may be prescribed by the board of education or State or federal law or regulations. Any such transfers shall be reported to the board of education at its next regular meeting and shall be entered in the minutes.

(d) The board of education may amend the budget to transfer money to or from the capital outlay fund to or from any other fund, with the approval of the board of county commissioners, to meet emergencies unforeseen and unforeseeable at the time the budget resolution was adopted. When such an emergency arises, the board of education may adopt a resolution requesting approval from the board of commissioners for the transfer of a specified amount of money to or from the capital outlay fund to or from some other fund. The resolution shall state the nature of the emergency, why the emergency was not foreseen and was not foreseeable when the budget resolution was adopted, what specific objects of expenditure will be added or increased as a result of the transfer, and what objects of expenditure will be eliminated or reduced as a result of the transfer. A certified copy of this resolution shall be transmitted to the board of county commissioners for (its) approval and to the boards of education of all other local school administrative units in the county for their information. The board of commissioners shall act upon the request within 30 days after it is received by the clerk to the board of commissioners or the chairman of the board of commissioners, after having afforded the boards of education of all other local school administrative units in the county an opportunity to comment on the request. The board of commissioners may either approve or disapprove the request as presented. Upon either approving or disapproving the request, the board of commissioners shall forthwith so notify the board of education making the request and any other board of education that exercised its right to comment thereon. Upon receiving such notification, the board of education may proceed to amend the budget resolution in the manner indicated in the request. Failure of the board of county commissioners to act within the time allowed for approval or disapproval shall be deemed approval of the request. The time limit for action by the board of county commissioners may be extended by mutual agreement of the board of county commissioners and the board of education making the request. A budget resolution amended in accordance with this subsection need not comply with G.S. 115C-430. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

CASE NOTES

Cited in Save our Schs. of Bladen County, Inc. v. Bladen County Bd. of Educ., 140 N.C. App. 233, 535 S.E.2d 906, 2000 N.C. App. LEXIS 1109 (2000); Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-434. Interim budget.

In case the adoption of the budget resolution is delayed until after July 1, the board of education shall make interim appropriations for the purpose of paying salaries and the usual ordinary expenses of the local school administrative unit for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made and expended shall be charged to the proper appropriations in the budget resolution. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Part 3. Fiscal Control.

§ 115C-435. School finance officer.

Each local school administrative unit shall have a school finance officer who shall be appointed or designated by the superintendent of schools and approved by the board of education, with the school finance officer serving at the pleasure of the superintendent. The duties of school finance officer may be conferred on any officer or employee of the local school administrative unit or, upon request of the superintendent, with approval by the board of education and the board of county commissioners, on the county finance officer. In counties where there is more than one local school administrative unit, the duties of finance officer may be conferred on any one officer or employee of the several local school administrative units by agreement between the affected superintendents with the concurrence of the affected board of education and the board of county commissioners. The position of school finance officer is hereby declared to be an office that may be held concurrently with other appointive, but not elective, offices pursuant to Article VI, Sec. 9, of the Constitution. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Dismissal Authority. — A superintendent of schools has the authority to dismiss a school finance officer without the approval of the board of education. See opinion of Attorney General to Grady L. Hunt Locklear, Jacobs & Hunt, 1998 N.C.A.G. 45 (10/29/98).

§ 115C-436. Duties of school finance officer.

(a) The school finance officer shall be responsible to the superintendent for:

(1) Keeping the accounts of the local school administrative unit in accordance with generally accepted principles of governmental accounting, the rules and regulations of the State Board of Education, and the rules and regulations of the Local Government Commission.

(2) Giving the preaudit certificate required by G.S. 115C-441.

(3) Signing and issuing all checks, drafts, and State warrants by the local school administrative unit, investing idle cash, and receiving and depositing all moneys accruing to the local school administrative unit.

(4) Preparing and filing a statement of the financial condition of the local school administrative unit as often as requested by the superintendent, and when requested in writing, with copy to the superintendent, by the board of education or the board of county commissioners.

(5) Performing such other duties as may be assigned to him by law, by the superintendent, or by rules and regulations of the State Board of Education and the Local Government Commission.

All references in other portions of the General Statutes or local acts to school treasurers, county treasurers, or other officials performing any of the duties conferred by this section on the school finance officer shall be deemed to refer to the school finance officer.

(b) The State Board of Education has authority to issue rules and regulations having the force of law governing procedures for the disbursement of money allocated to the local school administrative unit by or through the State. The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the disbursement of all other moneys allocated or accruing to the local school administrative unit. The State Board of Education and the Local Government Commission may inquire into and investigate the internal control procedures of a local school administrative unit with respect to moneys under their respective jurisdictions and may require any modifications in internal control procedures which may be necessary or desirable to prevent embezzlements or mishandling of public moneys. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

Revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec. 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected. Revenues appropriated to the local school administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county appropriation until the county appropriation to the local school administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the local school administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the local school administrative unit in writing of those restrictions. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 779.)

Legal Periodicals. — For survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2252 (1997).

CASE NOTES

Applicability of 1985 Amendment. — The 1985 amendment to this section, defining "clear proceeds," could only be effective as to monies collected because of traffic violations occurring on and after July 17, 1985. Cauble v. City of Asheville, 314 N.C. 598, 336 S.E.2d 59 (1985).

Use of Penal Fines. — Where a local ordinance was passed to enforce state-mandated air quality standards was a penal law, the penalties imposed for the violation of the ordinance were punitive in nature, and the payment of those penalties was payable to the school board under G.S. 115C-437. Donoho v. City of Asheville, 153 N.C. App. 110, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002), cert. denied, 356 N.C. 669, 576 S.E.2d 107 (2002), cert. dismissed, 356 N.C. 669, 576 S.E.2d 110 (2003), cert. denied, 356 N.C. 669, 576 S.E.2d 110 (2003).

County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006), cert. denied, appeal dismissed, 361 N.C. 430, 648 S.E.2d 845 (2007).

Cited in State ex rel. Thornburg v. Currency in Amount of $52,029.00, 324 N.C. 276, 378 S.E.2d 1 (1989); Craven County Bd. of Educ. v. Boyles, 343 N.C. 87, 468 S.E.2d 50 (1996); State v. Nixon, — N.C. App. —, — S.E.2d —, 2002 N.C. App. LEXIS 2091 (May 21, 2002); Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., 188 N.C. App. 454, 655 S.E.2d 850, 2008 N.C. App. LEXIS 225 (2008).

§ 115C-438. Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The State Board of Education shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The State Board of Education may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The State Board of Education shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State Board. The State Board of Education shall also withhold money used for payment of salaries for the superintendent, transportation director, and all other administrative officers or employees charged by the local board of education or the local superintendent with implementing the Transportation Information Management System, pursuant to G.S. 115C-240(d), if the State Board finds that a local school administrative unit is not progressing in good faith and is not using its best efforts to implement the Transportation Information Management System.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1987, c. 414, s. 14; 1987 (Reg. Sess., 1988), c. 1025, s. 15; 1989 (Reg. Sess., 1990), c. 1066, s. 106; 1991, c. 689, s. 39.2; 1991 (Reg. Sess., 1992), c. 900, s. 77(b).)

§ 115C-439. Facsimile signatures.

The board of education may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-440. Accounting system.

(a) System Required. — Each local school administrative unit shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget resolution as originally adopted and subsequently amended.

(b) Basis of Accounting. — Local school administrative units shall use the modified accrual basis of accounting in recording transactions.

(c) Encumbrance Systems. — Except as otherwise provided in this subsection, no local school administrative unit is required to record or show encumbrances in its accounting system. The Local Government Commission, in consultation with the State Board of Education, shall establish regulations, based on total membership of the local school administrative unit or some other appropriate criterion, setting forth which units are required to maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in the budget resolution. Any other local school administrative unit may record and show encumbrances in its accounting system.

(d) Commission Regulations. — The Local Government Commission, in consultation with the State Board of Education, may prescribe rules and regulations having the force of law as to:

(1) Features of accounting systems to be maintained by local school administrative units.
(2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis and identifying what revenues are susceptible to accrual.
(3) Definitions of terms not clearly defined in this Article.

These rules and regulations may be varied according to the size of the local school administrative unit, or according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-440.1. Report on county spending on public capital outlay.

(a) It is the purpose of Article 42 of Chapter 105 of the General Statutes for counties to appropriate funds generated under that Article to increase the level of county spending for public elementary and secondary school capital outlay (including retirement of indebtedness incurred by the county for this purpose) above and beyond the level of spending prior to the levy of the additional tax authorized under that Article.

(b) On or before May 1 of each year the Local Government Commission shall furnish to the General Assembly a report of the level of each county's appropriations for public school capital outlay, including appropriations to the public school capital outlay fund, funds expended by counties on behalf of and for the benefit of public schools for capital outlay, monies reserved for future years' retirement of debt incurred or capital outlay, and any other information the Local Government Commission considers relevant. For purposes of this subsection, the term "public schools" includes charter schools, if authorized. The Local Government Commission shall develop and implement by May 1, 1997, a uniform reporting system whereby counties are able to report all county expenditures under this subsection.

(c) Any local board of education may petition the Local Government Commission to make a finding that the funds provided by a county for public school capital outlay purposes are, within the financial resources available and consistent with the fiscal policies of the Board of County Commissioners, inadequate to meet the public school capital outlay needs within that county and that the Board of County Commissioners has not complied with the requirements or intent of this Article. The petition shall be in the form prescribed by the Commission. In making its finding, the Commission shall consider the facts it is required to report under subsection (b) of this section, as well as any other information it deems necessary. The Commission shall report its findings on such petition, together with any recommendations it deems appropriate, to the Joint Legislative Commission on Governmental Operations. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1995, c. 507, s. 17.5; 1995 (Reg. Sess., 1996), c. 666, ss. 4, 5.)

§ 115C-441. Budgetary accounting for appropriations.

(a) Incurring Obligations. — Except as set forth below, no obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this section. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

____
(Date)

____
(Signature of finance officer)"

An obligation incurred in violation of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section.

(b) Disbursements. — When a bill, invoice, or other claim against a local school administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if he determines the amount to be payable, the budget resolution includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the board of education.

(c) Board of Education Approval of Bills, Invoices, or Claims. — The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the local school administrative unit that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(c1) Continuing Contracts for Capital Outlay. — An administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed and/or paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, provided:

a. The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation;
b. An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year; and
c. Contracts for capital outlay expenditures are approved by a resolution adopted by the board of county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

(d) Payment. — A local school administrative unit may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository, by a bank wire transfer from an official depository, or by a warrant on the State Treasurer. Except as provided in this subsection each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or signed by the chairman or some other member of the board pursuant to subsection (c) of this section. The certificate shall take substantially the following form:

"This disbursement has been approved as required by the School Budget and Fiscal Control Act.

____

(Signature of finance officer)"

No certificate is required on payroll checks or drafts or on State warrants.

(e) Penalties. — If an officer or employee of a local school administrative unit incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he and the sureties on his official bond are liable for any sums so committed or disbursed. If the finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he and the sureties on his official bond are liable for any sums illegally committed or disbursed thereby. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 783, ss. 1, 2; 1997-456, s. 27.)

Local Modification. — County of Buncombe, Buncombe County School Administrative Unit and Asheville City School Administrative Unit: 1983, c. 360; Burke County and Burke County School Administrative Unit: 1985, c. 198; Pender: 1981, c. 775; Sampson: 1983, c. 209.

Cross References. — As to civil liability of board of education members, see G.S. 115C-48.

§ 115C-441.1. Dependent care assistance program.

The State Board of Education is authorized to provide eligible employees of local school administrative units a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The State Board may authorize local school administrative units to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 14(b); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

§ 115C-442. Fidelity bonds.

(a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the board of education, not less than fifty thousand dollars ($50,000). This bond shall cover the faithful performance of all duties placed on the finance officer by or pursuant to law and the faithful accounting for all funds in his custody except State funds placed to the credit of the local school administrative unit by the State Treasurer. The premium on the bond shall be paid by the local school administrative unit.

(b) The State Board of Education shall provide for adequate and appropriate bonding of school finance officers and such other employees as it deems appropriate with respect to the disbursement of State funds. When it requires such bonds, the State Board of Education is authorized to place the bonds and pay the premiums thereon.

(c) The treasurer of each individual school and all other officers, employees and agents of each local school administrative unit who have custody of public school money in the normal course of their employment or agency shall give a true accounting bond with sufficient sureties in an amount to be fixed by the board of education. The premiums on these bonds shall be paid by the local school administrative unit. Instead of individual bonds, a local school administrative unit may provide for a blanket bond to cover all officers, employees, and agents of the local school administrative unit required to be bonded, except the finance officer. The finance officer may be included within the blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 2007-85, s. 1.)

Effect of Amendments. — Session Laws 2007-85, s. 1, effective July 1, 2008, substituted "fifty thousand dollars ($50,000)" for "ten thousand dollars ($10,000) nor more than two hundred fifty thousand dollars ($250,000)" in subsection (a).

§ 115C-443. Investment of idle cash.

(a) A local school administrative unit may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the board of education may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the board of education. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest at any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Local Government Commission may approve. Investment deposits shall be secured as provided in G.S. 115C-444(b).

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America.
(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
(3) Obligations of the State of North Carolina.
(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Secretary of the Local Government Commission may impose.
(5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
(6) Obligations maturing no later than 18 months after the date of purchase of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, Fannie Mae, the Banks for Cooperatives, and the Federal Land Banks.
(7) Any form of investment allowed by law to the State Treasurer.
(8) Any form of investment allowed by G.S. 159-30 to local governments and public authorities.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local school administrative units may pay all incidental costs thereof and all reasonable cost of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) It is the intent of this Article that the foregoing provisions of this section shall apply only to those funds received by the local school administrative unit as required by G.S. 115C-437. The county finance officer shall be responsible for the investment of all county funds allocated to the local school administrative unit prior to such county funds actually being remitted to the school finance officer as provided by G.S. 115C-437. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1985, c. 246, s. 1; 2001-487, s. 14(h).)

Editor's Note. — Article 7A of Chapter 54, referred to in this section, was repealed by Session Laws 1981, c. 282. See now Article 12 of Chapter 54B, G.S. 54B-236 et seq.

§ 115C-444. Selection of depository; deposits to be secured.

(a) Each board of education shall designate as the official depositories of the local school administrative unit one or more banks, savings and loan associations, or trust companies in this State. It shall be unlawful for any money belonging to a local school administrative unit or an individual school to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 115C-443(b); however, moneys belonging to an administrative unit or an individual school may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(b) Money on deposit in an official depository or deposited at interest pursuant to G.S. 115C-443(b) shall be secured by deposit insurance, surety bonds, or investment securities of such nature, in a sufficient amount to protect the administrative unit or an individual school on account of deposit of moneys made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local school administrative unit because of the default or insolvency of the depository. (1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 682, s. 23; c. 866, ss. 1, 2; 1985, c. 246, s. 2.)

§ 115C-445. Daily deposits.

Except as otherwise provided by law, all moneys collected or received by an officer, employee or agent of a local school administrative unit or an individual school shall be deposited in accordance with this section. Each officer, employee and agent of a local school administrative unit or individual school whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the board of education gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars ($250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer or individual school treasurer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer, employee or agent collecting or receiving any taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer, employee or agent shall be audited at least annually. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-446. Semiannual reports on status of deposits and investments.

Each school finance officer shall report to the Secretary of the Local Government Commission on January 1 and July 1 of each year, or such other dates as the Secretary may prescribe, the amounts of money then in his custody and in the custody of treasurers of individual schools within the local school administrative unit, the amount of deposits of such money in depositories, a list of all investment securities and time deposits held by the local school administrative unit and individual schools therein. In like manner, each bank or trust company acting as the official depository of any administrative unit or individual school may be required to report to the Secretary a description of the surety bonds or investment securities securing such public deposits. If the Secretary finds at any time that any moneys of a local school administrative unit or an individual school are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer in charge of the moneys of the failure to comply with law. Upon such notification, the officer shall comply with the law within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the Secretary. The Local Government Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 866, s. 3.)

§ 115C-447. Annual independent audit.

(a) Each local school administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of a local school administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any local school administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the local school administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

The State Auditor shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited.

(b) When the State Board of Education finds that incidents of fraud, embezzlement, theft, or management failures in a local school administrative unit make it appropriate to review the internal control procedures of the unit, the State Board of Education shall so notify the unit. If the incidents were discovered by the firm performing the audit under subsection (a) of this section, the board of the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. Where the firm preparing the audit under subsection (a) of this section identifies significant problems with internal control procedures the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit.

If the incidents were not discovered by the firm performing the audit under subsection (a) of this section, the State Board of Education and the Local Government Commission shall employ an audit firm to review the internal control procedures of that local school administrative unit. Upon completion of this review, the audit firm shall report publicly to the State Board of Education, the Local Government Commission, and the board of the local school administrative unit. If the State Board of Education determines that significant changes are needed in the internal control procedures of the local school administrative unit, the local board shall submit a plan of corrective actions to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. The local school administrative unit shall pay the cost of this audit. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1983, c. 913, s. 17; 1987 (Reg. Sess., 1988), c. 1025, s. 14; 1993, c. 539, s. 891; 1994, Ex. Sess., c. 24, s. 14(c); 2005-276, s. 7.58.)

§ 115C-448. Special funds of individual schools.

(a) The board of education shall appoint a treasurer for each school within the local school administrative unit that handles special funds. The treasurer shall keep a complete record of all moneys in his charge in such form and detail as may be prescribed by the finance officer of the local school administrative unit, and shall make such reports to the superintendent and finance officer of the local school administrative unit as they or the board of education may prescribe. Special funds of individual schools shall be deposited in an official depository of the local school administrative unit in special accounts to the credit of the individual school, and shall be paid only on checks or drafts signed by the principal of the school and the treasurer. The board of education may, in its discretion, waive the requirements of this section for any school which handles less than three hundred dollars ($300.00) in any school year.

(b) Nothing in this section shall prevent the board of education from requiring that all funds of individual schools be deposited with and accounted for by the school finance officer. If this is done, these moneys shall be disbursed and accounted for in the same manner as other school funds except that the check or draft shall not bear the certificate of preaudit.

(c) For the purposes of this section, "special funds of individual schools" includes by way of illustration and not limitation funds realized from gate receipts of interscholastic athletic competition, sale of school annuals and newspapers, and dues of student organizations. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-449. Proceeds of insurance claims.

Moneys paid to a local school administrative unit pursuant to contracts of insurance against loss of capital assets through fire or casualty shall be used to repair or replace the damaged asset, or if the asset is not repaired or replaced, placed to the credit of the capital outlay fund for appropriation at some future time. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-450. School food services.

School food services shall be included in the budget of each local school administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115C-426. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-451. Reports to State Board of Education; failure to comply with School Budget Act.

(a) The State Board of Education shall have authority to require local school administrative units to make such reports as it may deem advisable with respect to the financial operation of the public schools.

(b) The State Board of Education shall be responsible for assuring that local boards of education comply with State laws and regulations regarding the budgeting, management, and expenditure of funds. When a local board of education willfully or negligently fails or refuses to comply with these laws and regulations, the State Board of Education shall issue a warning to the local board of education and direct it to take remedial action. In addition, the State Board may suspend the flexibility given to the local board under G.S. 115C-105.21A and may require the local board to use funds during the term of suspension only for the purposes for which they were allotted or for other purposes with the specific approval from the State Board.

(c) If the local board of education, after warning, persists in willfully or negligently failing or refusing to comply with these laws and regulations, the State Board of Education shall by resolution assume control of the financial affairs of the local board of education and shall appoint an administrator to exercise the powers assumed. The adoption of a resolution shall have the effect of divesting the local board of education of its powers as to the adoption of budgets, expenditure of money, and all other financial powers conferred upon the local board of education by law. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1991, c. 529, s. 5; 1997-443, s. 8.7.)

CASE NOTES

Taken together, under G.S. 115C-12, 115C-408, and 115C-451, the powers of the North Carolina Board of Education (BOE) are limited to the control, administration, and disbursement of state and federal moneys, while the state superior courts maintain jurisdiction to hear disputes between charter schools and their local boards of education; thus, a superior court and not the BOE had jurisdiction to consider the claim of a group of charter schools that a local board of education and its superintendent had violated G.S. 115C-238.29H(b) by failing to transfer to the charter schools a pro rata share of the per pupil moneys included in the local board's local current expense fund. Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ., — N.C. App. —, 673 S.E.2d 667, 2009 N.C. App. LEXIS 154 (2009).

§ 115C-452. Fines and forfeitures.

The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance officer, who shall forthwith determine what portion of the total is due to each local school administrative unit in the county and remit the appropriate portion of the amount to the finance officer of each local school administrative unit. Fines and forfeitures shall be apportioned according to the projected average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board of Education pursuant to G.S. 115C-430. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

The term "penal laws," as used in the context of this section, means laws that impose a monetary payment for their violation. The payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than to compensate a particular party. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988).

Two Distinct Funds for Public Schools. — The provisions of this section relating to the clear proceeds from penalties, forfeitures and fines identify two distinct funds for the public schools. These are (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state, and (2) the clear proceeds of all fines collected for any breach of the criminal laws. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988).

What Is Included in Local Current Expense Fund. — Reading G.S. 115C-452 and G.S. 115C-430 in pari materia, it is clear that fines and forfeitures are appropriated to the local current expense fund, which is used for the local school administrative unit's current operating expenses. Therefore, the appropriations included in the local current expense fund — fines and forfeitures, supplemental school taxes and county budgetary appropriations — are local current expense appropriations to the local school administrative unit. Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

Proceeds of Bond Payable to Board of Education. — In custody case in which wife sought to regain custody of child who had been removed outside the country, bond set by superior court judge was to ensure husband's appearance, as the punishment for his failure to so appear would be immediate forfeiture of the bond, and since the terms of the bond specifically made its proceeds payable to the State of North Carolina should it be forfeited, such bond was penal in nature and accrued to the Board of Education. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 322 N.C. 115, 367 S.E.2d 915 (1988), reversing 83 N.C. App. 213, 349 S.E.2d 618 (1986).

§§ 115C-453 through 115C-457: Reserved for future codification purposes.

Article 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.1. Creation of Fund; administration.

(a) There is created the Civil Penalty and Forfeiture Fund. The Fund shall consist of the clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution.

(b) The Fund shall be administered by the Office of State Budget and Management. The Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools. (1997-443, s. 8.20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-423, s. 2.)

Editor's Note. — Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

Session Laws 2003-423, which amended subsection (a), in ss. 4 through 6, provides: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November of 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to provide that the General Assembly may place the clear proceeds of civil penalties, civil forfeitures, and civil fines collected by a State agency in a State fund to be used exclusively for maintaining free public schools.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act shall become effective January 1, 2005.

"Sections 2 through 3 of this act become effective only if the voters approve the constitutional amendment set out in Section 1 of this act. If the voters approve the constitutional amendment, Sections 2 through 3 of this act shall become effective January 1, 2005." The constitutional amendment was approved November 2004.

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

CASE NOTES

Statute Properly Articulates the Necessary Details to Effect the Constitutional Purpose of Maintaining Free Public Schools. — Section 115C-457.1, which created the civil penalty fund, is consistent with the intent and purpose of N.C. Const. art. IX, § 7, that civil penalties be used exclusively to support the State's public schools; because art. IX, § 7 fails to unambiguously specify how that is to be accomplished, it requires legislation to give it effect, and G.S. 115C-457.1 properly articulates the necessary details to effect the constitutional purpose. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Meaning of "Local Current Expense Appropriation". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Francine Delany New

Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

OPINIONS OF ATTORNEY GENERAL

Disposition of Proceeds of Environmental Civil Penalties. — The clear proceeds of environmental civil penalties controlled by Article IX, Section 7 which were collected from offending local school administrative units before September 1, 1997, may not be returned to the offending local units but rather should be deposited into the General Fund. The clear proceeds of environmental civil penalties controlled by Article IX, Section 7 which are collected from offending local school administrative units on or after September 1, 1997, may not be returned to the offending local units. However, in compliance with this section, these funds should be remitted to the Civil Penalty and Forfeiture Fund, transferred to the State School Technology Fund and allocated to all eligible local school administrative units, except the offending unit, on the basis of average daily membership. See opinion of Attorney General to Richard Whisnant, General Counsel Department of Environment, Health & Natural Resources, 1997 N.C.A.G. 65 (11/4/97).

§ 115C-457.2. Remittance of moneys to the Fund.

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year. (1997-443, s. 8.20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-423, s. 3; 2005-276, s. 6.37(v); 2006-66, s. 6.9(c).)

Editor's Note. — Session Laws 2005-276, s. 6.37(w), provides: "The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-189, s. 2, provides: "The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

CASE NOTES

Penalties for Failure to Comply With Statutory or Regulatory Tax Provisions. — Monetary payments for a taxpayer's noncompliance with a mandate of Chapter 105 are penalties and, therefore, subject to N.C. Const., art. IX, § 7; thus, monies collected by the North

Carolina Department of Revenue for late filings, underpayments, and for failing to comply with statutory or regulatory tax provisions are payable to public schools. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

Cited in Donoho v. City of Asheville, 153 N.C. App. 110, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002); State v. Lopez, 169 N.C. App. 816, 611 S.E.2d 197, 2005 N.C. App. LEXIS 806 (2005); Holly Ridge Assocs., LLC v. N.C. Dep't of Env't & Natural Res., 361 N.C. 531, 648 S.E.2d 830, 2007 N.C. LEXIS 811 (2007).

§ 115C-457.3. Appropriation of moneys in the Fund.

(a) The General Assembly shall appropriate moneys in the Civil Penalty and Forfeiture Fund in the Current Operations Appropriations Act. These appropriations shall be made to the State Public School Fund for allotment by the State Board of Education, on behalf of the counties, to local school administrative units on a per pupil basis in accordance with Article IX, Section 7(b) of the North Carolina Constitution.

(b) In accordance with subsection (a) of this section, the State Board of Education shall allocate these funds according to the allotted average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board pursuant to G.S. 115C-430. (1997-443, s. 8.20; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-423, s. 3.2; 2005-276, s. 6.37(g).)

Editor's Note. — Session Laws 2005-276, s. 6.37(w), provides: "The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006."

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Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Civil penalties paid by public school systems to state agencies must be remitted to the Civil Penalty Fund for return to all of the public schools in the manner dictated by G.S. 115C-457.3. N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504, 2005 N.C. LEXIS 694 (2005).

Cited in Donoho v. City of Asheville, 153 N.C. App. 110, 569 S.E.2d 19, 2002 N.C. App. LEXIS 1087 (2002).

Article 32.

State Literary Fund.

§ 115C-458. State Literary Fund.

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Literary Fund shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

(1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096; 1981, c. 423, s. 1; 2009-451, s. 7.37(a).)

Editor's Note. — Session Laws 2009-451, s. 7.37(b), deleted "Loans from" from the article heading.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.37(a), effective July 1, 2009, deleted "Loans by State Board from" at the beginning of the section heading, and rewrote the second paragraph.

§ 115C-459. Terms of loans.

Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed eight percent (8%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the local board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the local board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094; 1981, c. 423, s. 1; 1983, c. 477.)

§§ 115C-460 through 115C-467: Repealed by Session Laws 2009-451, s. 7.37(c), effective July 1, 2009.

Editor's Note. — Session Laws 2009-451, s. 7.37(d) made the repeal of G.S. 115C-460 through 115C-467 not applicable to outstanding loans from the State Literary Fund.

Former G.S. 115C-460 through 115C-467, concerning loans from the State Literary Fund, were derived from Session Laws 1955, c. 1372, art. 11, ss. 3-8; and 1959, c. 227; c. 764, ss. 1, 2. They were amended by Session Laws 1971, c. 704, s. 12; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

ARTICLE 32A.

Scholarship Loan Fund for Prospective Teachers.

§ 115C-468: Recodified as G.S. 116-209.33 by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

Editor's Note. — Session Laws 2005-276, s. 9.17(a), provides: "The Scholarship Loan Fund for Prospective Teachers is transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§§ 115C-469, 115C-470: Repealed by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

§ 115C-471: Recodified as G.S. 116-209.34 by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

§ 115C-472: Repealed by Session Laws 1997-18, s. 11.

§ 115C-472.1: Repealed by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

ARTICLE 32B.

Computer Loan Revolving Fund.

§ 115C-472.5: Repealed by Session Laws 2009-451, s. 7.36(a), effective July 1, 2009.

Editor's Note. — Former G.S. 115C-472.5, which created the Computer Loan Revolving Fund, was enacted by Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 23(a), and was amended by Session Laws 1997-18, s. 15(m) and 2004-129, s. 33.

§§ 115C-472.6 through 115C-472.9: Reserved for future codification purposes.

ARTICLE 32C.

Fund for the Reduction of Class Size in Public Schools.

§ 115C-472.10. Establishment of the Fund for the Reduction of Class Size in Public Schools.

(a) There is established under the control and direction of the State Board of Education the Fund for the Reduction of Class Size in Public Schools. This fund shall be a nonreverting special revenue fund consisting of moneys credited to it under G.S. 20-81.12(b12) from the sale of special registration plates to support the public schools.

(b) The State Board of Education shall allocate funds in the Fund for the Reduction of Class Size in Public Schools to local school administrative units to reduce class size in public schools. (2000-159, s. 8.)

Article 33.

Assumption of School District Indebtedness by Counties.

§ 115C-473. Method of assumption; validation of proceedings.

The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the school budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township, city administrative unit or other political subdivision in the county, hereinafter collectively called "local districts," lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of Chapter 159 of the General Statutes, known as "The Local Government Finance Act," insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of such fund among the schools of the county as provided in Article 31 of this Chapter.

The assumption, as herein provided, by any county, at any time prior to the 28th day of February, 1951, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed, and validated: Provided, that nothing herein shall prevent counties and local taxing districts from levying taxes to provide for the payment of their debt service requirements if they have not been otherwise provided for. (1955, c. 1372, art. 12, s. 1; 1981, c. 423, s. 1.)

CASE NOTES

Former Section Considered in Pari Materia with Special School Bond Act. — Where former G.S. 115-109, similar to this section, and a special school bond act (Session Laws 1957, c. 1078) dealt with the same general subject, namely, assumption by counties of school district indebtedness, these statutory provisions would be regarded as in pari materia. It was presumed that the earlier general act was known to the legislature when it enacted the later special act, and that the later statute was enacted in the light of and in reference to the former general statute on the same subject. Strickland v. Franklin County, 248 N.C. 668, 104 S.E.2d 852 (1958).

§ 115C-474. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian.

In any county where the bonds of a local district have been assumed under the provisions of this Article, all taxes levied and collected for the purpose of paying the principal of and interest on said bonds, or for creating a sinking fund for the retirement of said bonds, shall be deposited in the school debt service fund of the county. The custodian of all moneys and other assets of a sinking fund created for the retirement of said bonds is hereby authorized to turn over such moneys and assets to the county treasurer, the county sinking fund commissioner or other county officer charged with the custodianship of sinking funds, and such custodian shall thereby be discharged from further responsibility for administration of and accounting for such sinking fund. (1955, c. 1372, art. 12, s. 2; 1981, c. 423, s. 1.)

§ 115C-475. Allocation to district bonds of taxes collected.

The collections of taxes levied for debt service on all taxable property of a county in which local district bonds have been assumed shall be proportionately allocated to each issue of such bonds. (1955, c. 1372, art. 12, s. 3; 1981, c. 423, s. 1.)

§§ 115C-476 through 115C-480: Reserved for future codification purposes.

ARTICLE 34.

Refunding and Funding Bonds of School Districts.

§ 115C-481. School district defined.

The term "school district" as used in this Article shall be deemed to include any special school taxing district, local tax district, special charter district, city administrative unit or other political subdivision of a county by which or on behalf of which bonds have been issued for erecting and equipping school buildings, or for refunding the same, and such bonds are outstanding. (1955, c. 1372, art. 13, s. 1; 1981, c. 423, s. 1.)

§ 115C-482. Continuance of district until bonds are paid.

Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the payment of its bonds, such school district shall continue in existence with its boundaries unchanged from those established at the time of issuance of its bonds, unless such boundaries shall have been extended and thereby embrace additional territory subject to the levy of such taxes, until all of its outstanding bonds, together with the interest thereon, shall be paid. (1955, c. 1372, art. 13, s. 2; 1981, c. 423, s. 1.)

§ 115C-483. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.

The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act.

The tax-levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded, shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 3; 1981, c. 423, s. 1.)

§ 115C-484. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.

In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at the time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of the Local Government Bond Act, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Finance Act, except in the following respects:

(1) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(2) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, G.S. 159-54 and G.S. 159-55 (the Local Government Bond Act,) shall be read and understood as if they contained no requirements in respect to such matters.

(3) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 4; 1981, c. 423, s. 1.)

§§ 115C-485 through 115C-489: Reserved for future codification purposes.

Article 34A.

Critical School Facility Needs Fund.

§§ 115C-489.1 through 115C-489.2: Repealed by Session Laws 1995, (Reg. Sess., 1996), c. 631, s. 14, effective 30 days after the last school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 14, provides: "Effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2, Article 34A of Chapter 115C of the General Statutes is repealed. Any unexpended funds in the Critical School Facility Needs Fund, as provided for in G.S. 115C-489.1, which is repealed by this section, are transferred to the Public School Building Capital Fund created in G.S. 115C-546.1." The contingency was met in October 2003, when Wake County became the last school system to receive targeted funding under the program.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

§§ 115C-489.3, 115C-489.4: Repealed by Session Laws 1995 (Regular Session, 1996), c. 631, s. 13.

Cross References. — For provisions regarding erection of school buildings, see G.S. 115C-521.

Editor's Note. — Former G.S. 115C-489.3(c) provided that the statewide school facility minimum standards adopted by the State Board of Education pursuant to that section should apply to the construction, reconstruction, enlargement, and improvement of all school buildings after the standards were adopted, regardless of the source of the funds for the project. For provisions regarding erection of school buildings, see G.S. 115C-521.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

Session Laws 1996, Second Extra Session, c. 18, s. 18.17(b), effective August 3, 1996, repealed G.S. 115C-489.3(c), regarding application of the statewide school facility minimum standards. Because this section was repealed by Session Laws 1995 (Regular Session, 1996), c. 631, s. 13, this separate repeal of subsection (c) is not set out.

ARTICLE 34B.

Qualified Zone Academy Bonds and Qualified School Construction Bonds.

§ 115C-489.5. Qualified zone academy bonds and qualified school construction bonds; findings.

The General Assembly finds:

(1) Section 226 of the Taxpayer Relief Act of 1997, as codified at 26 U.S.C. § 54E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.

(2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.

(2a) Section 1521, et seq., of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted as 26 U.S.C. § 54F, provides a new source of funds for construction, rehabilitation, or repair of public school facilities or for acquisition of land for public school facilities through the issuance of qualified school construction bonds.

(3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy bonds or qualified school construction bonds. It is intended that the qualified zone academy bonds and qualified school construction bonds be sold at a price so that the tax credits received produce the economic equivalent of interest that otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds or qualified school construction bonds are obligated to repay the principal amount of the qualified zone academy bonds or qualified school construction bonds but need not make interest payments.

(4) Applicable federal law limits the amount of qualified zone academy bonds and qualified school construction bonds that may be issued in

North Carolina in a calendar year. The amount of qualified school construction bonds that may be issued in the State is divided between amounts specifically designated for identified local school districts pursuant to ARRTA ("local allocation") and amounts allocated to the entire State for use throughout the State ("statewide allocation"). (2000-69, s. 1; 2009-140, s. 1.)

Editor's Note. — Subdivisions (1) through (4) were enacted as (a) through (d) and have been redesignated at the direction of the Revisor of Statutes.

Session Laws 2000-69, s. 4, in part, provides: "Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing.

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-69, s. 4(d) contains a severability clause.

Effect of Amendments. — Session Laws 2009-140, s. 1, effective June 19, 2009, added "and Qualified School Constructions Bonds" at the end of the article heading; inserted "and qualified school construction bonds" in the section heading; in subdivision (1), substituted "26 U.S.C. § 54E" for "26 U.S.C. § 1397E"; added subdivision (2a); in subdivision (3), inserted "or qualified school construction bonds" three times, in the second sentence, substituted "and qualified school construction bonds be sold at a price so that the tax credits received produce the economic equivalent" for "be sold at par value so that the tax credits received are instead"; and in subdivision (4), inserted "and qualified school construction bonds" in the first sentence, and added the second sentence.

§ 115C-489.6. Administration; consultation; issuance of bonds.

(a) QZAB Program. — The State Board of Education is designated the State education agency responsible for administering the qualified zone academy bond program in North Carolina for the purposes of 26 U.S.C. § 54E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

(1) Defining those areas and schools that are eligible under federal law to participate in the qualified zone academy bond program in North Carolina.

(2) Designing an application process under which proposals may be solicited from qualified zone academies.

(3) Determining the eligibility of an applicant to be a participating qualified zone academy.

(4) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions must include:

  a. Requiring that the bond proceeds be used only for rehabilitating or repairing the public school facility in which the qualified zone academy is located, which may include (i) wiring and other infrastructure improvements related to providing technology and (ii) equipment related to the rehabilitation or repair, but not personal computers or similar technology equipment.

  b. Conditions designed to assure that the allocation is used in a timely manner.

(5) Confirming that the terms of any qualified zone academy bonds issued in accordance with this program are consistent with the terms of the federal program.

(a1) Qualified School Construction Bond Program. — The State Board of Education is designated the State education agency responsible for administering the statewide allocation of authority to issue qualified school construction bonds under 26 U.S.C. § 54F. The State Board of Education shall perform all activities required to implement and carry out the statewide allocation for the qualified school construction bond program in North Carolina. Those activities include:

(1) Designing an application process under which proposals may be solicited from issuers wishing to issue qualified school construction bonds pursuant to the statewide allocation.

(2) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions may include:

  a. Requiring that the bond proceeds be used for purposes permitted under 26 U.S.C. § 54F.

  b. Conditions designed to assure that the allocation is used in a timely manner and that the allocations are made in accordance with the requirements of federal statutes, regulations, and rulings.

(3) Confirming that the terms of any qualified school construction bonds issued in accordance with this program are consistent with the terms of the federal program.

(4) Acting as the State entity designated to receive notice from any local school district that it will not utilize its local allocation so that the unused resource will become part of the statewide allocation. Local school districts receiving a local allocation are hereby directed to coordinate the use of such allocation with the State Board of Education so that any local allocation that will not be used by the local school district becomes eligible for use as part of the statewide allocation.

(b) Assistance. — The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. — In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a prospective issuer of qualified zone academy bonds or qualified school construction bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. — Any qualified zone academy bonds or qualified school construction bonds may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), qualified zone academy bonds or qualified school construction bonds to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale. (2000-69, s. 1; 2009-140, s. 1.)

Effect of Amendments. — Session Laws 2009-140, s. 1, effective June 19, 2009, in subsection (a), substituted "QZAB Program" for "State Board of Education to Administer Program" in the subsection catchline, and substituted "26 U.S.C. § 54E" for "26 U.S.C. § 1397E" at the end of the first sentence; added subsection (a1); in subsection (c), inserted "or qualified school construction bonds"; and, in subsection (d), deleted "bonds designated as" preceding "qualified zone" twice, and inserted "or qualified school construction bonds" twice.

Article 35.

Voluntary Endowment Fund for Public Schools.

§ 115C-490. Creation of endowment funds; administration.

Any local board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, bequests or other forms of voluntary contributions. Any endowment fund established under the provisions of this Article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the Endowment Fund of the Public Schools of __________ County or __________ City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-491. Boards of trustees public corporations; powers and authority generally; investments.

Any board of trustees created and organized under this Article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, devises and bequests, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or moneys belonging to the endowment fund in the exercise of its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-492. Expenditure of funds; pledges.

It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or local school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, devises and bequests and from using the same for such lawful school purposes as the donor or donors designate: Provided, always, that the administration of any such pledges, gifts, donations, devises and bequests, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may, with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at any time before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-493. When only income from fund expended.

Where the donor of said pledges, gifts, donations, devises and bequests so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-494. Property and income of board of trustees exempt from State taxation.

All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and bequests received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State. (1961, c. 970; 1981, c. 423, s. 1.)

§§ 115C-495 through 115C-499: Reserved for future codification purposes.

ARTICLE 35A.

College Scholarships.

§ 115C-499.1. Definitions.

The following definitions apply to this Article:

(1) Academic year. — A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Authority. — The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.

(3) Eligible postsecondary institution. — A school that is:

  a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

  b. A community college as defined in G.S. 115D-2(2);

  c. A nonprofit postsecondary institution as defined in G.S. 116-22(1) or G.S. 116-43.5(a)(1); or

  d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).

(4) Matriculated status. — Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible postsecondary institution.
(5) Scholarship. — A scholarship for education awarded under this Article.
(6) Title IV. — Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq. (2005-344, s. 2; 2006-66, s. 9.19; 2006-221, s. 5B; 2006-259, s. 8(h).)

Editor's Note. — Session Laws 2005-344, s. 14, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act."

§ 115C-499.2. Eligibility requirements for a scholarship.

In order to be eligible to receive a scholarship under this Article, a student seeking a degree, diploma, or certificate at an eligible postsecondary institution must meet all of the following requirements:
(1) Only needy North Carolina students are eligible to receive scholarships. For purposes of this subsection, "needy North Carolina students" are those eligible students whose expected family contribution under the federal methodology does not exceed five thousand dollars ($5,000).
(2) The student must meet all other eligibility requirements for the federal Pell Grant, with the exception of the expected family contribution.
(3) The student must qualify as a legal resident of North Carolina and as a resident for tuition purposes in accordance with definitions of residency that may from time to time be adopted by the Board of Governors and published in the residency manual of the Board of Governors.
(4) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status at an eligible postsecondary institution.
(5) In order to continue to be eligible for a scholarship for the student's second and subsequent academic years, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible postsecondary institution in which the student is enrolled.
(6) A student may not receive a scholarship under this Article for more than four full academic years. (2005-344, s. 2.)

§ 115C-499.3. Scholarship amounts; amounts dependent on net income available.

(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars ($4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the amount of net income available under Chapter 18C of the General Statutes. If the net income available is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive a proportionate scholarship amount.

(c) The minimum award of a scholarship under this Article shall be one hundred dollars ($100.00). (2005-344, s. 2; 2005-276, s. 31.1(v); 2006-226, s. 22.)

Editor's Note. — Session Laws 2005-276, s. 3.1(v), amended this section in the coded bill drafting format provided by G.S. 120-20.1. The word "under" was inadvertently stricken from the first sentence of subsection (a). The word "under" in brackets has been inserted at the direction of the Revisor of Statutes.

§ 115C-499.4. Scholarship administration; reporting requirements.

(a) The scholarships provided for in this Article shall be administered by the Authority under rules adopted by the Authority in accordance with the provisions of this Article.

(b) The Authority shall report no later than June 1, 2008, and annually thereafter to the Joint Legislative Education Oversight Committee. The report shall contain, for the previous academic year, the amount of scholarship and grant money disbursed, the number of students eligible for the funds, the number of eligible students receiving the funds, and a breakdown of the eligible postsecondary institutions that received the funds.

(c) The Authority may use up to one and one-half percent (1.5%) of the funds transferred in accordance with Chapter 18C of the General Statutes for administrative purposes.

(d) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article.

(e) The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under S.L. 2005-344. (2005-344, s. 2; 2005-276, s. 31.1(v1); 2006-259, s. 8(k); 2006-264, s. 91(d).)

Editor's Note. — Session Laws 2006-259, s. 8(k) has been codified as subsection (e) of this section, effective August 23, 2006, at the direction of the Revisor of Statutes.

Session Laws 2006-264, s. 91(d), effective August 27, 2006, which contained similar provisions to those in Session Laws 2006-259, s. 8(k), was repealed pursuant to the terms of Session Laws 2006-264, s. 91(e), upon Session Laws 2006-259 becoming law.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

Article 36.

Voted Tax Supplements for School Purposes.

§ 115C-500. Superintendents must furnish boundaries of special taxing districts.

It shall be the duty of superintendents to furnish tax listers at tax listing time the boundaries of each taxing district as provided in G.S. 115C-276(m). (1981, c. 423, s. 1.)

Local Modification. — (As to Article 36) Transylvania: 1983, c. 363.

§ 115C-501. Purposes for which elections may be called.

(a) To Vote a Supplemental Tax. — Elections may be called by the local tax-levying authority to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several local school administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, to make the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the local school administrative units in the county pursuant to G.S. 115C-430.

(b) To Increase a Supplemental Tax Rate. — Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) To Enlarge City Administrative Units. — Elections may be called in any districts, or other school areas, of a county administrative unit to ascertain the will of the voters in such districts or other school areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such districts, or other school areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other districts, or other school area or areas, so consolidated with the city administrative unit the same school taxes as shall be levied in the other portion of the city administrative unit.

(d) To Supplement and Equalize Educational Advantages. — Elections may be called in any area of a county administrative unit which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any parts of such area.

(e) To Abolish a Special School Tax. — Elections may be called in any local school administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) To Vote School Bonds. — Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) To Provide a Supplemental Tax on a Countywide Basis after Petition for Consolidation of City or County Administrative Units. — Elections may be called for an entire county on the question of a special tax to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit pursuant to the provisions of the first paragraph of G.S. 115C-70(a) and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a countywide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit shall not be affected. If the vote for the countywide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of the first paragraph of G.S. 115C-70(a).

(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts. — An election may be called in any districts or other school areas, from contiguous counties, as to whether the districts in one county shall be enlarged by annexing or consolidating therewith any adjoining districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the districts in the other county. If such election carries, the said special or supplemental tax shall be collected pursuant to G.S. 115C-511 and remitted to the local school administrative unit on whose behalf such special and supplemental tax is already levied: Provided, that notwithstanding the provisions of G.S. 115C-508, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such elections.

(i) To Vote School Bonds and Taxes in Certain Merged School Administrative Units. — Elections for the purpose of authorizing the levy of certain taxes and the issuance of bonds shall be called by a merged school administrative unit described in G.S. 115C-513 with the consent of the boards of county commissioners of both counties in which the merged unit is located. The election shall be conducted and the results canvassed by the boards of elections of both counties. The boards of elections shall certify the results of the election to the board of education of the merged school administrative unit. The board of education shall certify and declare the result of the election, which shall be determined on an aggregate basis from the results certified by the boards of elections. The board of education shall publish a statement of the result once as provided in the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1; 1975, c. 437, ss. 2-4; 1981, c. 423, s. 1; 1991, c. 325, s. 2.)

Editor's Note. — G.S. 115C-70, referred to in this section, was repealed by Session Laws 1985 (Reg. Sess., 1986), c. 975, s. 24.

Session Laws 2002-159, s. 91.1, provides: "Nothing in the General Statutes or any local act entitles any charter school, prior to July 1, 2003, to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes."

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Intent of Former Article. — The clear intent of Article 14 of former Chapter 115, similar to this Article, was to provide a method by which the county commissioners could be compelled to call an election to obtain a tax levy or for other purposes. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213, aff'd, 274 N.C. 343, 163 S.E.2d 387 (1968).

Additional Tax to Supplement Teachers' Salaries. — In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to former G.S. 115-80(a), the board of county commissioners acted as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by the state Constitution, to maintain a system of public schools. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213, aff'd, 274 N.C. 343, 163 S.E.2d 387 (1968).

Additional Decisions Under Former Statutes. — As to local tax elections for schools, see Gill v. Board of Comm'rs, 160 N.C. 176, 76 S.E. 203 (1912); Chitty v. Parker, 172 N.C. 126, 90 S.E. 17 (1916); Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924); Evans v. Mecklenburg County, 205 N.C. 560, 172 S.E. 323 (1934); Forester v. Town of North Wilkesboro, 206 N.C. 347, 174 S.E. 112 (1934); Freeman v. City of Charlotte, 206 N.C. 913, 174 S.E. 453 (1934); Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

As to elections on the question of enlarging local tax districts, see Perry v. Board of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Hicks v. Board of Educ., 183 N.C. 394, 112 S.E. 1 (1922); Barnes v. Board of Comm'rs, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Vann v. Board of Comm'rs, 185 N.C. 168, 116 S.E. 421 (1923); Plott v. Board of Comm'rs, 187 N.C. 125, 121 S.E. 190 (1924); Blue v. Board of Trustees, 187 N.C. 431, 122 S.E. 19 (1924); Jones v. Board of Educ., 187 N.C. 557, 122 S.E. 290 (1924); Carr v. Little, 188 N.C. 100, 123 S.E. 625 (1924).

Meaning of "Local Current Expense Appropriation". — The phrase "local current expense appropriation" in G.S. 115C-238.29H(b) of the Charter School Funding Statute (Current Operations Appropriations and Capital Improvement Appropriations Act of 1998) is synonymous with the phrase "local current expense fund" in G.S. 115C-426(e) of the School Budget and Fiscal Control Act. Hence, in addition to an equal per pupil share of the county's annual appropriation to school board's local current expense fund, charter school was entitled to a share of supplemental school taxes and penal fines and forfeitures received by the board. Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984); Francine Delany New Sch. for Children, Inc. v. Asheville City Bd. of Educ., 150 N.C. App. 338, 563 S.E.2d 92, 2002 N.C. App. LEXIS 490 (2002), cert. denied, 356 N.C. 670, 577 S.E.2d 117 (2003).

Cited in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

§ 115C-502. Maximum rate and frequency of elections.

(a) A tax for supplementing the public school budget shall not exceed fifty cents (50¢) on the one-hundred-dollar ($100.00) value of property subject to taxation by the local school administrative unit: Provided, that in any local school administrative unit, district, or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one-hundred-dollars ($100.00) valuation of said property.

(b) If a majority of those who vote in any election called pursuant to the provisions of this Article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same local school administrative unit, district, or area until the lapse of six months after the prior election. However, the foregoing time limitation shall not apply to any election held in a local school administrative unit, district, or other school area which is larger or smaller than the local school administrative unit, district, or area in which the prior election was held, or to any election held for a different purpose than the prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10; 1975, c. 437, s. 5; 1981, c. 423, s. 1.)

§ 115C-503. Who may petition for election.

Local boards of education may petition the board of county commissioners for an election in their respective local school administrative units or for any school areas therein.

A majority of the qualified voters who have resided for the preceding 12 months in an area which is adjacent to a city administrative unit may petition the county board of education for an election on the question of annexing such area to the city administrative unit. For any of the other purposes enumerated in G.S. 115C-501, twenty-five percent (25%) of the qualified voters who reside in a local school administrative unit may petition the local board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 7.)

§ 115C-504. Necessary information in petitions.

The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

(1) Purpose for calling the proposed election.

(2) A legally sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.

(3) The maximum rate of tax which is proposed to be levied. This subdivision shall not apply to a petition for an election to enlarge a city administrative unit.

(4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

(5) If the petition for an election is to supplement and equalize educational advantages, and if any school districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5; 1981, c. 423, s. 1.)

§ 115C-505. Boards of education must consider petitions.

The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board of education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the endorsement shall be made in the minutes of the board. Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

Local boards of education shall have no discretion in granting an election to abolish a special school tax in any local school administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said local school administrative unit, district or school area shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax," the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes Counties, petition of twenty-five percent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24.)

CASE NOTES

Time for Holding Subsequent Election Revoking Local Tax. — The period in which no election may be had should be computed from the last valid election on the subject. Weesner v. Davidson County, 182 N.C. 604, 109 S.E. 863 (1921), decided under former corresponding provisions.

§ 115C-506. Action of board of county commissioners or governing body of municipality.

Petitions requesting special school elections and bearing the approval of the board of education of the local school administrative unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition by the twenty-fifth day before the election, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this Article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 9.)

CASE NOTES

Duty of County Commissioners Ministerial. — The county commissioners have no discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. Board of Educ. v. Board of County Comm'rs, 189 N.C. 650, 127 S.E. 692 (1925), decided under former corresponding provisions.

§ 115C-507. Rules governing elections.

All elections under this Chapter shall be held and conducted by the appropriate county or municipal board of elections.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

The notice of the election shall be given as provided in G.S. 163-33(8) and in addition include a legal description of the area within which the election is to be held, and, if any additional tax is proposed to be levied, the maximum rate of tax to be levied which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

No new registration of voters is required, but the board of elections, in its discretion, may use either Method A or Method B set forth in G.S. 163-288.2 in activating the voters in the territory.

The ballot in such election shall contain the words "FOR local tax and AGAINST local tax" except when the election is held under subsection (c) of G.S. 115C-501, in which case the ballots shall contain the words "FOR enlargement of the ______________________________ City Administrative Unit and school tax of the same rate," and "AGAINST enlargement of the ______________________________ City Administrative Unit and school tax of the same rate."

The elections shall be held in accordance with the applicable provisions of Chapter 163 and the expense of the election shall be paid by the board of education of the administrative unit in which the election is held, provided that when territory is proposed to be added to a city administrative unit, that unit shall bear the expense.

No election held under this Article shall be open to question except in an action or proceeding commenced within 30 days after the board of elections has certified the results. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7; 1981, c. 423, s. 1.)

CASE NOTES

As to giving notice of election under former corresponding provisions, see Younts v. Commissioners of Union County, 151 N.C. 582, 66 S.E. 575 (1909); Gregg v. Board of Comm'rs, 162 N.C. 479, 78 S.E. 301 (1913); Miller v. Duke School Dist., 184 N.C. 197, 113 S.E. 786 (1922), decided under former corresponding provisions.

§ 115C-508. Effective date; levy of taxes.

(a) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July 1 next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next following such election. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-509. Conveyance of school property upon enlargement of city administrative unit.

Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within 10 days after July 1 next following such election, convey and transfer to the board of education of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-510. Elections in districts created from portions of contiguous counties.

Districts already created and those that may be created from portions of two or more contiguous counties may hold elections under this Article to be incorporated or to vote a special local tax therein for the purposes enumerated in G.S. 115C-501.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts already created or proposed to be created, the petition must be signed by fifteen percent (15%) of the registered voters who reside in the area. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this Article relating to the conduct of local tax elections, then shall call upon the county board of elections to hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this Article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For Incorporation" and "Against Incorporation." If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of "_______________ Joint Local Tax School District of _______________ Counties." The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the schoolhouse; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

All districts formed from portions of contiguous counties before the ratification of this Article are hereby authorized and empowered to exercise all the powers and privileges conferred by this Article. (1955, c. 1372, art. 14, s. 8; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, ss. 8, 24.)

§ 115C-511. Levy and collection of taxes.

(a) If a local school administrative unit or district has voted a tax to operate schools of a higher standard than that provided by State and county support, the board of county commissioners of each county in which the local school administrative unit is located is authorized to levy a tax on all property having a situs in the local school administrative unit for the purpose of supplementing the local current expense fund, the capital outlay fund, or both.

(b) Before April 15 of each year, the tax supervisor of each county in which the local school administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the local school administrative unit and any districts therein pursuant to this Article. The board of education, in the budget it submits to the board of county commissioners, shall request the rate of ad valorem tax it wishes to have levied on its behalf as a school supplemental tax, not in excess of the rate approved by the voters. The board of county commissioners may approve or disapprove this request in whole or in part, and may levy such rate of supplemental tax as it may find to be in the best interests of the taxpayers and the public schools, not in excess of the rate requested by the board of education. Upon approving a supplemental tax levy pursuant to this section, the board of county commissioners shall cause the school supplemental tax to be computed for all property subject thereto. The taxes thus computed shall be shown separately on the county tax receipts for the fiscal year, and the county shall collect the school supplemental tax in the same manner that county taxes are collected. Collections shall be remitted to the local school administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionately divided between the county and the local school administrative unit. The board of county commissioners may, in its discretion, deduct from the proceeds of the school supplemental tax the actual additional cost to the county of levying, computing, billing, and collecting the tax.

(c) It shall be unlawful for any part of a tax levied pursuant to this Article to be used for any purpose other than those purposes authorized by the election in the unit or district. (1955, c. 1372, art. 14, s. 9; 1965, c. 584, s. 12; 1975, c. 437, s. 6; 1981, c. 423, s. 1.)

CASE NOTES

Cited in Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs, 188 N.C. App. 399, 656 S.E.2d 296, 2008 N.C. App. LEXIS 230 (2008).

§ 115C-512. Expansion of existing supplemental school tax area pursuant to merger of school administrative units in certain counties.

(a) This section applies to:

(1) Counties that have three school administrative units located entirely within the county, only one of which units has a supplemental school tax in effect that is levied exclusively by the elected school board of the administrative unit.

(2) Counties that have three school administrative units, two of which are entirely within the county and one of which is located in more than one county.

(b) If a school administrative unit in a county to which this section applies merges with another school administrative unit in the county, and one of the merging units has previously voted a supplemental school tax that is in effect prior to and at the time of the merger, then the geographic area subject to the supplemental school tax in effect prior to the merger shall be expanded to include the entire geographic area encompassed by the new school administrative unit resulting from the merger. The levy and collection of and the expenditure of revenues from the tax shall be expanded as herein provided without approval of the voters of the geographic area directly affected by the merger, and shall be used for purposes provided in G.S. 115C-501(a).

(b1) If legislation is enacted providing for the merger of two school administrative units located entirely within a county described in subdivision (a)(2), and one of the merging units has previously voted a supplemental school tax that is in effect, then from July 1, 1991, and for two years following the effective date of the merger, the board of commissioners of the county in which the units are located may create a special tax district pursuant to this Article consisting of one of the merging units and may levy a supplemental school tax in that district at a rate that is different from the rate levied in the remainder of the merged unit. The tax levied in the special district may be levied without approval of the voters of the district but may not exceed the amount of the supplemental school tax previously voted in one of the merged units. The supplemental school tax levied pursuant to this subsection may be used for any purpose for which a board of education may budget funds under Article 31 of Chapter 115C of the General Statutes.

(c) Notwithstanding levying authority in existence prior to the merger, the board of county commissioners shall, upon merger of the administrative units, have the exclusive authority to levy the supplemental tax expanded in accordance with this section, provided that the tax shall be levied at a rate not to exceed the rate of the supplemental school tax in effect prior to the merger of the school administrative units. (1989, c. 768, s. 1; 1991, c. 325, s. 1.)

§ 115C-513. Special tax for certain merged school administrative units.

(a) Scope. — This section applies to a merged school administrative unit that consists of one entire county and part of a second county and is composed of two merging units, one of which is located within one county and one of which is located partly in the same county as the first unit and partly in a second county. A merged school administrative unit to which this section applies may levy taxes as provided in this section to be applied to the payment of notes, bonds, or refunding bonds issued to finance capital costs of school facilities as described in G.S. 159-48.

(b) Issuance of Bonds. — The board of education of a merged school administrative unit may issue notes, bonds, or refunding bonds at one time or from time to time to pay the capital costs of school facilities as described in G.S. 159-48. The bonds shall be issued and maintained in accordance with the provisions of Articles 1, 4, 5A, 7, 9, 10, and 11 of Chapter 159 of the General Statutes, except as modified by this section.

The board of education of a merged school administrative unit shall call for a referendum authorizing the issuance of notes, bonds, and refunding bonds and the levy of a tax to pay amounts relating to these notes, bonds, or refunding bonds. The referendum may be called only with the consent of the boards of commissioners of both counties in which the merged school administrative unit is located. The referendum shall be held in the merged school administrative unit and only those qualified voters who reside in the unit may vote. The board of commissioners of each county shall have the referendum conducted by the board of elections of its county.

After issuance of the approved bonds, the merged school administrative unit shall make timely payments of principal and interest on the bonds after receipt of notification of its debt service obligation pursuant to G.S. 159-35. The provisions of G.S. 159-36 govern a failure by the merged school administrative unit to levy taxes or otherwise provide for payment of the debt.

Bonds, notes, and refunding bonds issued under this section shall be exempt from all State, county, and municipal taxation and assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds, notes, and refunding bonds, and franchise taxes. The interest on bonds, notes, and refunding bonds is not subject to taxation as income.

Article 9 of the North Carolina Uniform Commercial Code, Chapter 25 of the General Statutes, does not apply to any security interest created in connection with the issuance of bonds under this section.

(c) Tax. — If a majority of the qualified voters of a merged school administrative unit voting on the question approve the issuance of bonds and levy of a tax as provided in this section, the board of education of the merged school administrative unit may levy a tax on all property having a situs in the merged school administrative unit for the purpose of retiring bonds issued by the unit under this section. Taxes levied pursuant to this section may be levied prior to the issuance of notes or bonds. The authority of a merged school administrative unit to levy a tax pursuant to this section terminates after all of the related notes, bonds, and refunding bonds are discharged or paid.

Before April 15 of each year, the tax assessor of each county in which the merged school administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the merged school administrative unit pursuant to this Article. The board of education of the merged school administrative unit, in the budget it submits to each board of county commissioners, shall set the rate of ad valorem tax it levies as a tax under this section. The levy under this section shall be at the rate necessary to provide for payment of interest on and principal of outstanding notes, bonds, and refunding bonds issued by the merged school administrative unit.

Each county in which the merged school administrative unit is located shall compute and collect this tax in the same manner that county taxes are collected. The tax shall be shown separately on the tax receipts for the fiscal year. Collections shall be remitted to the merged school administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionally divided between the county collecting the tax and the merged school administrative unit. The board of commissioners of each county collecting the tax levied under this section may, in its discretion, deduct from the proceeds of the tax the actual additional cost to the county of computing, billing, and collecting the tax. (1991, c. 325, s. 3; 1995, c. 46, s. 4.)

§§ 115C-514 through 115C-516: Reserved for future codification purposes.

SUBCHAPTER IX. PROPERTY.

Article 37.

School Sites and Property.

§ 115C-517. Acquisition of sites.

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290; 1981, c. 423, s. 1; c. 1127, s. 78; 1995, c. 199, s. 1.)

Local Modification. — Chapel Hill/ Carrboro School Administrative Unit: 1997-407, s. 2; Charlotte-Mecklenburg County School Administrative Unit: 1985, c. 229.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), as amended by Session Laws 2006-248, ss. 41.1, 41.2, and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make a final report to the 2007 General Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The Commission shall terminate upon the filing of its final report.

Editor's Notes. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2006-248, s. 1, provides: "This act shall be known as "The Studies Act of 2006."

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Constitutionality. — Former G.S. 115-125, similar to this section, did not violate the requirements of just compensation and due process provided by U.S. Const., Amend. XIV. Doby v. Brown, 135 F. Supp. 584 (M.D.N.C. 1955), aff'd, 232 F.2d 504 (4th Cir.), cert. denied, 352 U.S. 837, 77 S. Ct. 57, 1 L. Ed. 2d 55 (1956).

History of Section. — See Board of Educ. v. Forrest, 190 N.C. 753, 130 S.E. 621 (1925).

Presumption exists that school board will act in good faith and comply with all applicable state and federal regulations in its plans to enlarge school facilities. Board of Educ. v. Seagle, 120 N.C. App. 566, 463 S.E.2d 277 (1995), cert. denied, 343 N.C. 509, 471 S.E.2d 63 (1996).

Discretion of School Authorities. — The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950); Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

The advisability of taking property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

The board of education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the board, and its discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

County board of education had the discretion to determine what land constituted a "suitable site" to construct its athletic facilities and what land was "necessary" to construct its athletic facilities. The board had authority to condemn land to be used as wetlands mitigation and a source of fill as necessary to building athletic facilities in an environmentally sensitive area. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995), aff'd, 342 N.C. 648, 466 S.E.2d 717, rehearing denied, 343 N.C. 128, 468 S.E.2d 778 (1996), cert. denied, 519 U.S. 976, 117 S. Ct. 412, 136 L. Ed. 2d 325 (1996).

The courts are bound by the discretionary decision of a local board of education in selecting and determining the land necessary to construct a school, school building, school bus garage, a parking area, an access road suitable for school buses or "other school facilities" unless that decision is an arbitrary abuse of discretion or disregard of law. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995), aff'd, 342 N.C. 648, 466 S.E.2d 717, rehearing denied, 343 N.C. 128, 468 S.E.2d 778 (1996), cert. denied, 519 U.S.

976, 117 S. Ct. 412, 136 L. Ed. 2d 325 (1996).

Facts Not Showing Abuse of Discretion. — The fact that the site for a high school selected by the school authorities in a mountainous section of the State could be approached only by a crooked highway and over a narrow bridge, and that there might have been other satisfactory sites for such school, did not compel or support the conclusion that the school authorities abused their discretion in selecting the site. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Effect of Restrictive Covenants. — A board of education which purchases property for a valid school purpose cannot be enjoined to comply with restrictive covenants requiring that the property be used exclusively for residential purposes, the appropriate remedy for other landowners protected by the covenant being an action to recover damages for the taking of their property rights. Carolina Mills, Inc. v. Catawba County Bd. of Educ., 27 N.C. App. 524, 219 S.E.2d 509 (1975).

Necessity of Permits. — Whether permits would be required to satisfy G.S. 404 of the Clean Water Act did not raise an issue of fact concerning the need for school board to secure a permit before proceeding with expansion requiring condemnation of defendant's property, and that issue had nothing to do with whether the school board had found the land to be a "suitable site" for its needs. Board of Educ. v. Seagle, 120 N.C. App. 566, 463 S.E.2d 277 (1995), cert. denied, 343 N.C. 509, 471 S.E.2d 63 (1996).

Selection of Site on Grounds of County Home. — Former G.S. 153-9(9) (see now G.S. 153A-169) did not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school, when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

High School and Elementary School on Adjoining Sites. — A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than 10 (now 50) acres of land, if any part thereof must be obtained by condemnation. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of 10 (now 50) acres, since the board has the discretionary power to locate the schools on adjoining sites. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

There is no limitation on the acreage which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed 10 (now 50) acres. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

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Acquisition of Land by Purchase Does Not Affect Right to Condemn Additional Land. — Where a board of education has acquired a tract of land by purchase and because of the nature of the land an additional five acres is required, the board may resort to condemnation for the extra five acres needed, and this right is not nullified by the fact that the board has heretofore acquired some land for the school site by purchase. See opinion of the Attorney General to Mr. W. Earl Britt, Attorney for Fairmont Board of Education, 40 N.C.A.G. 216 (1969), rendered under former corresponding provisions.

§ 115C-518. Disposition of school property; easements and rights-of-way.

(a) When in the opinion of any local board of education the use of any building site or other real property or personal property owned or held by the board is unnecessary or undesirable for public school purposes, the local board of education may dispose of such according to the procedures prescribed in General Statutes, Chapter 160A, Article 12, or any successor provisions thereto. Provided, when any real property to which the board holds title is no longer suitable or necessary for public school purposes, the board of county commissioners for the county in which the property is located shall be afforded the first opportunity to obtain the property. The board of education shall offer the property to the board of commissioners at a fair market price or at a price negotiated between the two boards. If the board of commissioners does not choose to obtain the property as offered, the board of education may dispose of such property according to the procedure as herein provided. Provided that no State or federal regulations would prohibit such action. For the purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the school administrative unit, the board of education, and the school administrative official who most nearly performs the same duties performed by the specified city official. A local board of education may also sell any property other than real property through the facilities of the North Carolina Department of Administration. The proceeds of any sale of real property or from any lease for a term of over one year shall be applied to reduce the county's bonded indebtedness for the school administrative unit disposing of such real property or for capital outlay purposes.

(b) In addition to the foregoing, local boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporations to furnish utility services, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks.

(c) Any sale, exchange or lease of real or personal property by any local board of education prior to June 18, 1982, and pursuant to the authority of G.S. 115-126 is hereby validated, ratified and confirmed. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395; 1975, c. 264; c. 879, s. 46; 1977, c. 803; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1216; 1983, c. 731; 1985 (Reg. Sess., 1986), c. 975, s. 22.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 3; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 3; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 3; Cabarrus: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Durham Public Schools: 1997-64; Forsyth: 1993 (Reg. Sess., 1994, c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 2; Hyde: 1981, c. 877; Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 624, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 3; Richmond: 1991 (Reg. Sess., 1992), c. 898; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 4; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Translyvania: 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); city of Asheville: 2007-239, s. 2(a)-(d); city of Brevard: 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); Town of Rosman: 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); Asheville-Buncombe Technical Community College: 2000-99, s. 1; Asheville-Buncombe Technical Community College: 2000-99, s. 1; Asheville City Board of Education: 2007-239, s. 2(a)-(d); Bertie County Board of Education: 2006-61, ss. 1, 2; Bladen County Board of Education: 1991 (Reg. Sess., 1992), c. 853; 2003-122, ss. 1, 2 (as to subsection (a)); 2006-132, s. 1 (Natmore School property); city of Burlington Board of Education: 1993, c. 277, s. 3; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Dare County Board of Education: 2004-16 (as to lease of property to construct and provide up to three affordable rental housing projects with priority for teachers); Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Edgecombe County Board of Education: 2009-161, ss. 1-4 (as to construction and provision of affordable housing for certain employees); Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; 2006-86, ss. 1-3 (as to construction, provision or maintenance of affordable rental housing on property owned or leased by Hertford County Board of Education and rent of housing units owned by the Board with priority for teachers); Iredell-Statesville Schools: 2006,

c. 45, ss. 1, 1.1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, Second Ex. Sess., c. 16, s. 1; Transylvania County Board of Education: 1983, c. 579; 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); Albemarle City School Administrative Unit: 1985, c. 74.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the editor's note under G.S. 153A-158.1.

Cross References. — For provision exempting services, products, and properties generated through vocational education instructional activities from the requirements of this section, see G.S. 115C-159. As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see G.S. 160A-274.

Editor's Note. — Chapter 115, including G.S. 115-126, referred to in this section, was repealed by Session Laws 1981, c. 423, s. 1, and has been recodified as Chapter 115C.

CASE NOTES

Editor's Note. — *Many of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Power to Acquire Land. — Subsection (d) of former G.S. 115-126 did not give the board of education any additional power to acquire land for school purposes. This power was given by G.S. 115-27, 115-35(b) and 115-125 (see now G.S. 115C-40, 115C-36 and 115C-517). Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

There is nothing in the Constitution which prohibits the board of education from exchanging land which it owns for other land for school purposes. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

No Claim Would Lie Against Board of Commissioners. — The court did not err in determining complaint failed to state a claim as to the proposed sale of school and its adjacent property; the county board of education, not the board of commissioners, holds all school property and is capable of selling and transferring the same for school purposes; applying this law to the case under review, no claim with respect to disposition of the school property would lie against defendant board of commissioners. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

If a discrepancy in valuation exists it bears only on the question of abuse of discretion, and any such discrepancy is only one of the factors to be considered in determining whether the board has abused its discretion. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Presumption of Legality and Correctness. — Board of education's resolution to authorize its chairman to approve an interlocal agreement was afforded a presumption of legality and correctness: (1) G.S. 160A-274, G.S. 153A-158, G.S. 115C-36, and G.S. 115C-518 authorized the board, upon such terms and conditions as it deemed wise, to exchange property owned by the board, based upon a determination that the property was no longer suitable and necessary for public school purposes; (2) the board determined that the replacement office space in the Government Center was more suitable for its needs; (3) this determination was adequate to meet the unnecessary or unsuitable requirement of G.S. 115C-518, (4) plaintiff failed to overcome the presumption of legality afforded public officials; therefore (5) plaintiff's complaint did not state a cause of action, as required by G.S. 1A-1, N.C. R. Civ. P. 8(a), for which relief could be granted. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

Burden to Overcome Presumption. — The burden was on plaintiffs to overcome the presumption that the board of education, in proposing an exchange of property, was acting in good faith and in accord with the spirit and purpose of former G.S. 115-126. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Lease of Surplus Lands. — A city school administrative unit contemplated by G.S. 115-4 (see now G.S. 115C-66) was a governmental agency separate and distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, had legislative authority to lease the surplus, either for a public or a private purpose, so long as it exercised its discretion in good faith. Where lease stipulated that use was to be for a public or semipublic purpose, the law would presume that the parties intended and contemplated use of the property without unlawful discrimination because of race, religion or other illegal classification. State v. Cooke, 248 N.C. 485, 103 S.E.2d 846 (1958), appeal dismissed, 364 U.S. 177, 80 S. Ct. 1482, 4 L. Ed. 2d 1650, rehearing denied, 364 U.S. 856, 81 S.

Ct. 29, 5 L. Ed. 2d 80 (1960).

Delegation of Authority. — Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into, and a decree restraining the execution of the contract was proper. Bowles v. Fayetteville Graded Schools, 211 N.C. 36, 188 S.E. 615 (1936).

Statutory Discretion Was Not Withdrawn by Purchase of Facility. — Where plaintiffs alleged that defendants made unauthorized diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purpose of facility, although the sale of the school property may have resulted from the purchase of facility, the Board of Education's statutory discretion to determine that the school property was surplus property no longer needed for school purposes was not withdrawn by its actions with respect to the facility. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-519. Deeds to property.

All deeds to school property shall, after registration, be delivered to the superintendent of the local school administrative unit in which the property is located and he shall provide a safe place for preserving all such deeds. (1955, c. 1372, art. 15, s. 3; 1981, c. 423, s. 1.)

§ 115C-520. Vehicles owned by boards of education.

All school buses, trucks, automobiles and other motor vehicles owned by local boards of education and used for transporting pupils to and from school or used by other school personnel in the performance of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Division of Motor Vehicles as provided in G.S. 20-84. (1955, c. 1372, art. 15, s. 4; 1975, c. 716, s. 5; 1981, c. 423, s. 1.)

§ 115C-521. Erection of school buildings.

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter. In developing these plans, local boards of education shall consider the costs and feasibility of renovating old school buildings instead of replacing them.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the operation of the school, relocatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, no board of education shall invest any money until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board.

(c1) No local board of education shall apply for a certificate of occupancy for any new middle or high school building until the plans for the science laboratory areas of the building have been reviewed and approved to meet accepted safety standards for school science laboratories and related preparation rooms and stockrooms. The review and approval of the plans may be done by the State Board of Education or by any other entity that is licensed or authorized by the State Board to do so.

(d) Local boards of education shall make no contract for the erection of any school building unless the site upon which it is located is owned in fee simple by the board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners, may appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of the boards, whereby children from the administrative unit making the appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to the property shall be vested in the local board of education of the county embracing the former special charter district.

(e) The State Board of Education shall establish within the Department of Public Instruction a central clearinghouse for access by local boards of education that may want to use a prototype design in the construction of school facilities. The State Board shall compile necessary publications and a computer database to distribute information on prototype designs to local school administrative units. All architects and engineers registered in North Carolina may submit plans for inclusion in the computer database and these plans may be accessed by any person. The original architect of record or engineer of record shall retain ownership and liability for a prototype design. The State Board may adopt rules it considers necessary to implement this subsection. (1955, c. 1372, art. 15, ss. 5-7; 1969, c. 1022, s. 1; 1981, c. 423, s. 1; c. 638, s. 1; 1983, c. 761, s. 93; 1985, c. 783, s. 3; 1987, c. 622, s. 14; 1993, c. 416, s. 1; c. 465, s. 1; 1993 (Reg. Sess., 1994), c. 775, s. 6; 1995, c. 8, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(c), (d); 1997-222, s. 3; 1997-236, s. 1; 2009-59, s. 3.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 2; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 2; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 2; Duplin: 1993, c. 549, ss. 1, 2; Forsyth: 1993, c. 128, s. 1, 1993 (Reg. Sess., 1994), c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 2; 1993 (Reg. Sess., 1994), c. 623, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 2; 1993 (Reg. Sess., 1994), c. 623, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3; Orange: 1993 Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 2; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 3; Asheville City School Administrative Unit and Buncombe County School Administrative Unit: 1983, c. 360; Burke County School Administrative Unit: 1985, c. 198; Avery County Board of Education: 1998-7; Burke County Board of Education: 1985, c. 230; Lenoir County Board of Education: 1995, c. 200, s. 1; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the editor's note under G.S. 153A-158.1.

Cross References. — As to penalty for school officials having pecuniary interest in school supplies, see G.S. 14-236 and 14-237. As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

Editor's Note. — The statewide school facility minimum standards to be adopted under prior G.S. 115C-489.3, were repealed by Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 13, effective June 21, 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which amended this section, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, would have prohibited local governmental units from entering into guaranteed energy savings contracts under Part 2 of Article 3B of Chapter 143 on or after July 1, 1999. This provision was repealed by Session Laws 1999-235, s. 4, effective July 1, 1999.

Effect of Amendments. — Session Laws 2009-59, s. 3, effective June 5, 2009, added subsection (c1).

CASE NOTES

Editor's Note. *— The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Board of Education Presents Needs to Commissioners. — Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine What Expenditures Shall Be Made. — The board of commissioners of the county, and not the board of education, are charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents its plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education are necessary. When it determines that funds are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated in the approved projects. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The right of the board of commissioners to determine what expenditures shall be made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere with Authority of Board of Education. — The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of education. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

All Expenditures Must Be Authorized. — All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Expense a Countywide Charge. — It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a countywide charge. Reeves v. Board of Educ., 204 N.C. 74, 167 S.E. 454 (1933).

Commissioners May Reallocate Proceeds of Bond Issue. — A bond order issued under former G.S. 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit.

It was held that former G.S. 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

But May Not Change Purpose for Which Bonds Were Issued. — Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Any change in plan must be initiated by the board of education, then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary, and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Power of Board of Education Discretionary. — The building of a school is a matter vested by statute in the sound discretion of the county board of education and is not to be restrained by the courts, unless it is in violation of some provision of law, or unless the committee is influenced by improper motives, or there is misconduct on their part. Venable v. School Comm., 149 N.C. 120, 62 S.E. 902 (1908); Pickler v. County Board, 149 N.C. 221, 62 S.E. 902 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless it is in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

Courts Cannot Interfere with Discretion of Board of Education Absent Abuse. — The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Money Available for Erection of Building. — Where a county board of education consolidated five existing high schools into one countywide high school with the approval of the State Board of Education, and plans for the new school building were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend former corresponding section, providing that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money . . . available for its erection." Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Citizens' Action Against Board Mooted. — Citizens' action under G.S. 115C-521(d) to block a board of education from building a modular school on property leased from an association was dismissed because most of the citizens' claims were moot, as the school had already opened and the citizens did not seek the closure of the facility; as to a declaratory judgment voiding the lease and an injunction prohibiting future lease payments, G.S. 115C-521(d) prohibited only contracts for the erection of school buildings, but the lease agreement was merely a contract to lease land, and nothing in the lease required or even permitted the board to engage in conduct that violated the statute. Citizens Addressing Reassignment & Educ., Inc. v. Wake County Bd. of Educ., 182 N.C. App. 241, 641 S.E.2d 824, 2007 N.C. App. LEXIS 593 (2007).

Providing Electric Lights. — Under general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

A former statute similar to subsection (d) of this section did not apply to the erection of electric light wires. It applied only to sites for school buildings; it did not extend to or include the rights-of-way. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

Cited in Save our Schs. of Bladen County, Inc. v. Bladen County Bd. of Educ., 140 N.C. App. 233, 535 S.E.2d 906, 2000 N.C. App. LEXIS 1109 (2000).

§ 115C-521.1. Building standards for preschool students.

A public school that voluntarily applies for a child care facility license may use an existing or newly constructed classroom in a public school for three- and four-year-old preschool students without modifications to the classroom or building if the classroom:

(1) Has at least one toilet and one sink for hand washing;
(2) Meets kindergarten standards for overhead light fixtures;
(3) Meets kindergarten standards for floors, walls, and ceilings; and
(4) Has floors, walls, and ceilings that are free from mold, mildew, and lead hazards.

A public school that voluntarily applies for a child care facility license shall meet all other requirements for child care facility licensure. (2009-123, s. 1.)

Editor's Note. — Session Laws 2009-123, s. 3, made this section effective June 19, 2009.

§ 115C-522. Provision of equipment for buildings.

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment, and materials, and these purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year. The State Board of Education shall adopt rules regarding equipment standards for supplies, equipment, and materials related to student transportation. The State Board may adopt guidelines for any commodity that needs safety features. If a commodity that needs safety features is available on statewide term contract, any guidelines adopted by the State Board must at a minimum meet the safety standards of the statewide term contract. Compliance with Article 8 of Chapter 143 of the General Statutes is not mandatory for the purchase of published books, manuscripts, maps, pamphlets, and periodicals.

(1) Where competition is available, local school administrative units may utilize the:
   a. E-Quote service of the NC E-Procurement system as one means of solicitation in seeking informal bids for purchases subject to the bidding requirements of G.S. 143-131; and
   b. Division of Purchase and Contract's electronic Interactive Purchasing System as one means of advertising formal bids on purchases subject to the bidding requirements of G.S. 143-129 and applicable rules regarding advertising. This sub-subdivision does not prohibit a local school administrative unit from using other methods of advertising.

(2) In order to provide an efficient transition of purchasing procedures, the Secretary of the Department of Administration and the local school administrative units shall establish a local school administrative unit purchasing user group. The user group shall be comprised of

a proportionate number of representatives from the Department of Administration and local school administrative unit purchasing and finance officers. The user group shall examine any issues that may arise between the Department of Administration and local school administrative units, including the new relationship between the Department and the local school administrative units, the appropriate exchange of information, the continued efficient use of E-Procurement, appropriate bid procedures, and any other technical assistance that may be necessary for the purchase of supplies and materials.

(b) It shall be the duty of the local boards of education to provide suitable school furniture and apparatus, as provided in G.S. 115C-521(b).

(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Environment and Natural Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Public Health. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1352, art. 5, s. 35; art. 15, s. 8; 1965, c. 840; 1973, c. 476, s. 128; 1981, c. 423, s. 1; 1985, c. 436, s. 2; 1989, c. 727, s. 219(33); 1995 (Reg. Sess., 1996), c. 716, s. 13; 1997-443, s. 11A.51; 1998-194, s. 2; 2003-147, s. 1; 2004-199, s. 29(a); 2004-203, s. 72(b); 2007-182, s. 2.)

Cross References. — As to penalty for school officials having pecuniary interest in school supplies, see G.S. 14-236 and 14-237. As to exception for school food services, see G.S. 115C-264.

Editor's Note. — Session Laws 2002-107, s. 3, provides: "Notwithstanding any other provision of law to the contrary, the Secretary may conduct a pilot program for reverse auctions. The reverse auctions shall be utilized only for the purchase or exchange of those supplies, equipment, and materials as provided in G.S. 115C-522, for use by the public school systems. The Secretary shall report the results of the pilot program to the Joint Select Committee on Information Technology, upon the convening of the 2003 General Assembly."

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [Session Laws 2003-147] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of the act [Session Laws 2003-147], or April 1, 2004, whichever occurs first."

CASE NOTES

Editor's Note. — *Some of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Authority to Authorize Purchases. — Local school boards alone have the duty or authority to enter into or authorize purchases of supplies and equipment for the respective local school systems. Community Projects for Students, Inc. v. Wilder, 60 N.C. App. 182, 298 S.E.2d 434 (1982).

Compliance Presumed. — A county board would not be enjoined from constructing a new school building on the grounds that it has failed to make plans for water and sewer service for the school, where it appeared from the complaint that at the time the suit was instituted the construction of the proposed building had progressed only to the stage where bids had been accepted, since presumably the defendants at the proper time would comply with the statute and make provision for a proper supply of water. Lamb v. Randolph County Bd. of Educ., 235 N.C. 377, 70 S.E.2d 201 (1952).

Bonds for Sanitary Improvements. — See Taylor v. Board of Educ., 206 N.C. 263, 173 S.E. 608 (1934).

Market participant exemption applied to bar school bus operator's commerce clause claims where county school board was acting as a market participant, not a regulator, in requiring all school bus operators to complete new safety procedures and forms; the county school board had the ultimate contractual relationship with the school bus operators as interpreted under state law, including, G.S. 115C-522(a), and did not act as a third party regulator of the contractual relationship. N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

OPINIONS OF ATTORNEY GENERAL

As to applicability of statute to purchases made from state and local funds, and inapplicability to purchase of printing, see opinion of Attorney General to Mr. Herbert O. Carter, State Purchasing Officer, 44 N.C.A.G. 176 (1974), rendered under former corresponding provisions.

§ 115C-522.1: Repealed by Session Laws 2003-147, s. 2, effective for a local school administrative unit when the unit is certified as being E-Procurement compliant, or April 1, 2004, whichever is first.

Certification as E-Procurement Compliant. — Session Laws 2003-147, s. 12, which provides for repeal of this section by s. 2 of the act [Session Laws 2003-147], as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [Session Laws 2003-147] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of the act [Session Laws 2003-147], or April 1, 2004, whichever occurs first."

§ 115C-523. Care of school property.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

Notwithstanding any other provision of law, the parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars ($5,000). The Board of Education shall make written demand upon the parent or legal guardian as a prerequisite to bringing suit.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7; 1981, c. 423, s. 1; 1985, c. 581, s. 4.)

§ 115C-524. Repair of school property; use of buildings for other than school purposes.

(a) Repair of school buildings is subject to the provisions of G.S. 115C-521(c) and (d).

(b) It shall be the duty of local boards of education and tax-levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education may adopt rules and regulations under which they may enter into agreements permitting non-school groups to use school real and personal property, except for school buses, for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property pursuant to such agreements. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 23; 1991 (Reg. Sess., 1992), c. 900, s. 79(a).)

CASE NOTES

This section explicitly precludes liability from attaching to schools when the school facilities are being used for nonschool purposes. Lindler v. Duplin County Bd. of Educ., 108 N.C. App. 757, 425 S.E.2d 465, cert. denied, 333 N.C. 791, 431 S.E.2d 25 (1993).

Child Care Program. — The legislature may constitutionally delegate to the school board the power or authority to maintain a child care program. Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Bd. of Educ., 55 N.C. App. 134, 285 S.E.2d 110 (1981), cert. denied and appeal dismissed, 305 N.C. 300, 291 S.E.2d 150 (1982), decided under former § 115-133.

Immunity from Liability. — There is no exception, in cases of active negligence, to the immunity provided by this section. The legislature clearly intended to do more than codify the old common-law rule that if an affirmative act of negligence were committed or the premises were leased in a ruinous condition, a third party injured on school premises would have recourse against the county board of education. Plemmons v. City of Gastonia, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 307 S.E.2d 166 (1983).

A county board of education was immune from liability for injury to a minor who fell from gymnasium bleachers. Plemmons v. City of Gastonia, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 307 S.E.2d 166 (1983).

Immunity Precluded by Failure to Comply with Rules for Non-School Use. — The school district was not entitled to immunity for a personal injury claim suffered during a non-school sponsored event, where the school district had waived sovereign immunity by obtaining liability insurance, and it also had failed to comply with district procedures in allowing the non-school group to hold the event. Seipp v. Wake County Bd. of Educ., 132 N.C. App. 119, 510 S.E.2d 193 (1999).

The county school board's action to recover lost tax dollars expended in removing asbestos from school property was a governmental function exercised in pursuit of a sovereign purpose for the public good on behalf of the State, and the action was not barred by the statute of limitations. Rowan County Bd. of Educ. v. United States Gypsum Co., 87 N.C. App. 106, 359 S.E.2d 814, cert. denied, 321 N.C. 298, 362 S.E.2d 782 (1987).

Cited in Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

§ 115C-525. Fire prevention.

(a) Duty of Principal Regarding Fire Hazards. — The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

(1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.

(2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wiring, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.

(3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.

(4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.

(5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.

(6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115C-525(b).

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115C-525(b). It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections.

(b) Inspection of Schools for Fire Hazards; Removal of Hazards. — Every public school building in the State shall be inspected a minimum of two times during the year in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 120 days apart:

(1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in G.S. 115C-525(a)(1) through (5) exist, and to ensure that the building and all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the persons making

the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.

(2) The board of county commissioners of each county shall designate the persons to make the inspections and reports required by subdivision (1) of this subsection. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified persons, but no person shall make any inspection unless he shall be qualified as required by G.S. 153A-351.1 and Section 7 of Chapter 531 of the 1977 Session Laws. Nothing in this section shall be construed as prohibiting two or more counties from designating the same persons to make the inspections and reports required by subdivision (1) of this subsection. The board of county commissioners shall compensate or provide for the compensation of the persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

(3) It shall be the duty of the Commissioner of Insurance, the Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

(4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.

(5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection and not removed or corrected by the principals as required by subdivision (4) of this subsection are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard.

(c) Liability for Failure to Perform Duties Imposed by G.S. 115C-288(d) and 115C-525(a) or 115C-525(b). — Any person willfully failing to perform any of the duties imposed by G.S. 115C-288(d), 115C-525(a) or 115C-525(b) shall be guilty of a Class 3 misdemeanor and shall only be fined not more than five hundred dollars ($500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14; 1981, c. 423, s. 1; 1989, c. 681, s. 12; 1993, c. 539, s. 892; 1994, Ex. Sess., c. 24, s. 14(c); 2009-570, s. 40.)

Effect of Amendments. — Session Laws 2009-570, s. 40, effective August 28, 2009, substituted "G.S. 115C-288(d)" for "G.S. 115C-288" twice in subsection (c).

§ 115C-526. Reward for information leading to arrest of persons damaging school property.

Local boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding three hundred dollars ($300.00) for information leading to the arrest and conviction of any persons who willfully deface, damage, destroy or commit acts of vandalism or larceny of, the property belonging to the public school system under the jurisdiction of and administered by any local board of education. (1967, c. 369; 1973, c. 1216; 1975, c. 437, s. 7; 1981, c. 423, s. 1.)

§ 115C-527. Use of schools and other public buildings for political meetings.

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of annual or biennial precinct meetings and county and district conventions: Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465; 1981, c. 423, s. 1; 1983, c. 519, ss. 1, 2.)

§ 115C-528. Lease purchase and installment purchase contracts for certain equipment.

(a) Local boards of education may purchase or finance the purchase of automobiles; school buses; mobile classroom units; food service equipment, photocopiers; and computers, computer hardware, computer software, and related support services by lease purchase contracts and installment purchase contracts as provided in this section. Computers, computer hardware, computer software, and related support services purchased under this section shall meet the technical standards specified in the North Carolina Instructional Technology Plan as developed and approved under G.S. 115C-102.6A and G.S. 115C-102.6B.

(b) A lease purchase contract under this section creates in the local board the right to possess and use the property for a specified period of time in exchange for periodic payments and shall include either an obligation or an option to purchase the property during the term of the contract. The contract may include an option to upgrade the property during the term. A local board may exercise an option to upgrade without rebidding the contract.

(c) An installment purchase contract under this section creates in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(d) The term of a contract entered into under this section shall not exceed the useful life of the property purchased. An option to upgrade shall be considered in determining the useful life of the property.

(e) A contract entered into under this section shall be considered a continuing contract for capital outlay and subject to G.S. 115C-441(c1).

(f) A contract entered into under this section is subject to Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar ($500,000) threshold shall apply.

(g) Subsections (e) and (f) of this section shall not apply to contracts entered into under this section so long as the term of each contract does not exceed three years and the total amount financed during any three-year period is no greater than two hundred fifty thousand dollars ($250,000) or is no greater than three times the local board's annual State allocation for classroom materials, equipment, and instructional supplies, whichever is less. The local board shall submit information, including the principal and interest paid and the amount of outstanding obligation, concerning these contracts as part of the annual budget it submits to its board of county commissioners under Article 31 of this Chapter.

(h) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a local board to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any property financed or purchased by the contract.

(i) No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (1995 (Reg. Sess., 1996), c. 716, s. 14; 1997-236, s. 4; 2007-519, s. 1.)

§ 115C-529. Useful life guidelines.

The State Office of Information Technology Services shall develop and annually revise guidelines for determining the useful life of computers purchased under G.S. 115C-528. The Division of Purchase and Contract shall develop and periodically revise guidelines for determining the useful life of automobiles, school buses, and photocopiers purchased under G.S. 115C-528. The Local Government Commission shall develop and periodically revise guidelines for determining the useful life of mobile classroom units purchased under G.S. 115C-528. Guidelines for computers and photocopiers shall include provisions for upgrades during the term of the contract. The State Office of Information Technology Services, the Division of Purchase and Contract, and the Local Government Commission shall provide their respective guidelines to the State Board of Education by November 1, 1996. The State Board of Education shall provide the guidelines to local boards of education by January 1, 1997. (1995 (Reg. Sess., 1996), c. 716, s. 15; 2004-129, s. 34.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 15, was codified as this section at the direction of the Revisor of Statutes.

§ 115C-530. Operational leases of school buildings and school facilities.

(a) Local boards of education may enter into operational leases of real or personal property for use as school buildings or school facilities. Operational leases for terms of less than three years shall not be subject to the approval of the board of county commissioners. Operational leases for terms of three years or longer, including periods that may be added to the original term through the exercise of options to renew or extend, are permitted if all of the following conditions are met:

(1) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation.

(2) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the lease for the current fiscal year.

(3) The leases are approved by a resolution adopted by the board of county commissioners. If an operational lease is approved by the board of county commissioners, in each year the county commissioners shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the lease.

(4) Any construction, repair, or renovation of the property is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines.

For purposes of this section, an operational lease is defined according to generally accepted accounting principles.

(b) Local boards of education may enter into contracts for the repair or renovation of leased property if (i) the budget resolution includes an appropriation authorizing the obligation, (ii) an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year, and (iii) the repair or renovation is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines. Contracts for renovation that are subject to the bidding requirements of G.S. 143-129(a) and which do not constitute continuing contracts for capital outlay must be approved by the board of county commissioners.

(c) Operational leases and contracts entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a) (1), 159-148(a) (2), and 159-148(a) (3). For purposes of determining whether the standards set out in G.S. 159-148(a) (3) have been met, only the five hundred thousand dollar ($500,000) threshold shall apply. (1997-236, s. 2.)

§ 115C-531. (Repealed effective July 1, 2011) Capital leases of school buildings and school facilities.

(a) Definitions. — The following definitions apply in this section:

(1) Capital lease. — A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. — The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. — Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. — The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars ($300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. — A capital lease may not contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. — No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. — A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. — Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar ($500,000) threshold applies.

(h) No Agreements on Student Assignment. — A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected. — All laws relating to liens on private property apply to private property interests in a capital lease project undertaken under this section. (2006-232, s. 1; 2006-259, s. 54(a).)

Editor's Note. — Session Laws 2006-232, s. 3, makes this section effective August 12, 2006, and repealed effective July 1, 2011.

§ 115C-532. (Repealed effective July 1, 2011) Additional provisions applicable to build-to-suit capital leases.

(a) Definitions. — The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

(1) Build-to-suit capital lease. — A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars ($300,000).

(2) Prime contractor. — A contractor who contracts directly with the private developer or the private developer's construction manager at risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions. — A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. — Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

(1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.

(2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. — All architectural, engineering, and survey services shall be procured in accordance with the provisions of Article 3D of Chapter 143 of the General Statutes. Required design and engineering services shall be performed by an engineer or a licensed architect, to the extent permitted under G.S. 83A-13(b). Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services. — A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

(1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.

(2) The private developer or its construction manager at risk may prequalify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.

(3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant to G.S. 143-128.2, and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.

(4) A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk and any contractor may negotiate and reach agreement with the successful bidder on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

(5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. — Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease.

Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

(1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. — Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. — In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Facility programming, planning, and design, including both architectural and engineering services.

(3) Qualification and prequalification of contractors and subcontractors.

(4) Construction and construction management.

(5) Financing.

(6) Facility maintenance and repairs.

(7) Energy usage guarantees.

(8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.

(9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit. — A private developer shall provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period. (2006-232, s. 1; 2006-259, s. 54(b).)

Editor's Note. — Session Laws 2006-232, s. 3, makes this section effective August 12, 2006 and repealed effective July 1, 2011.

Article 38.

State Insurance of Public School Property.

§ 115C-533. Duty of State Board to operate insurance system.

The State Board shall have the duty to manage and operate a system of insurance for public school property. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-534. Duty to insure property.

(a) The board of every local school administrative unit in the public school system of this State, in order to safeguard the investment made in public schools, shall:

(1) Insure and keep insured to the extent of not less than seventy-five percent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage.

(2) Insure and keep insured adequately the equipment and contents of said building.

(b) The tax-levying authority for each local school administrative unit shall appropriate funds necessary for compliance with the provisions of subsection (a).

(c) Willful failure to comply with the provisions of (a) and (b) above, is declared a Class 3 misdemeanor. Every 24 hours without such insurance constitutes a separate offense. (1957, c. 1040; 1981, c. 423, s. 1; 1993, c. 539, s. 893; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 115C-535. Authority and rules for organization of system.

The State Board of Education is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school property. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The Board shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in its opinion is necessary to insure and protect effectively public school property, and it shall fix their compensation with the approval of the Personnel Commission. (1955, c. 1372, art. 16, s. 1; 1981, c. 423, s. 1.)

§ 115C-536. Public School Insurance Fund; decrease of premiums when fund reaches five percent of total insurance in force.

There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in G.S. 115C-535 to 115C-542 is referred to as "the Fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in G.S. 115C-535 to 115C-542 and to provide payment for such losses as may be incurred therein, there is hereby appropriated to the Fund the sum of two million dollars ($2,000,000), which shall be paid from and charged to the State Literary Fund as set up and defined in this Chapter. When the reserves in the Fund shall be increased by the payment of premiums by the governing boards of local school administrative school units, or otherwise, to the extent of one million dollars ($1,000,000), there shall be transferred from the Fund back to the State Literary Fund the sum of one million dollars ($1,000,000) and when the Fund shall again be increased to the extent of another one million dollars ($1,000,000), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars ($1,000,000) in full reimbursement of the sum of two million dollars ($2,000,000), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of local school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in the Fund for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said Fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in G.S. 115C-535 to 115C-542. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

When the Fund herein provided for reaches the sum of five percent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain the Fund at five percent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of the Fund are sufficient to maintain the same at five percent (5%) of the total insurance in force, no premium shall be charged for the ensuing year: Provided, that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the Fund shall be increased beyond five percent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of G.S. 115C-535 to 115C-542 within such five-year period. (1955, c. 1372, art. 16, s. 2; 1981, c. 423, s. 1.)

§ 115C-537. Insurance of property by local boards; notice of election to insure and information to be furnished; outstanding policies.

All local boards of education may insure all property within their units against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in the Fund hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in the Fund shall be insured by the Fund as of the expiration of the policy. Each local board shall give notice of its election to insure in the Fund at least 30 days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect, the Fund shall act as coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1955, c. 1372, art. 16, s. 3; 1957, c. 686, s. 3; 1981, c. 423, s. 1.)

§ 115C-538. Inspections of insured public school properties.

The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local boards of education shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4; 1981, c. 423, s. 1.)

§ 115C-539. Information to be furnished prior to insuring in Fund; providing for payment of premiums.

Local boards of education shall at least 30 days before insuring in the Fund, furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in the Fund shall be reached by agreement in accordance with the procedure hereinafter set up for adjustment of losses. Local boards of education and the tax-levying authority shall be required to provide for the payment of premiums for insurance on the school properties of each local school administrative unit, respectively, to the extent of not less than seventy-five percent (75%) of the current insurable value of the said properties, including the insurance in fire insurance companies and the insurance provided by the Fund as set out herein. (1955, c. 1372, art. 16, s. 5; 1981, c. 423, s. 1.)

§ 115C-540. Determination and adjustment of premium rates; certificate as to insurance carried; no lapse; notice as to premiums required, and payment thereof.

The State Board of Education shall determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school administrative units at the lowest cost possible in keeping with the payment of cost of administration of G.S. 115C-535 to 115C-542, and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each local school administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until the local board of education requests that said insurance be canceled or until such property becomes uninsurable in the manner set out in G.S. 115C-542. From time to time the local board of education shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax-levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local board of education shall within 30 days from notice thereof pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six percent (6%) per annum. (1955, c. 1372, art. 16, s. 6; 1981, c. 423, s. 1.)

§ 115C-541. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local school administrative units; disbursement of funds.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school administrative units, the Fund shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which the Fund is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and the Fund shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school administrative units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local board of education having charge of the property, and the two so appointed shall select a third, all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local board of education shall fail for 15 days to agree upon the third appraiser, then, on request of the State Board of Education or the local board of education having charge of the property, such third appraiser shall be selected by any regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local board of education having such property in charge. The costs of the appraisal shall be paid by the Fund. Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the local school administrative unit to its treasurer, upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this Chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 110.)

§ 115C-542. Maintenance of inspection and engineering service; cancellation of insurance.

The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in the Fund as hereinbefore provided, and to expend for such purpose not in excess of ten percent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local board of education shall be given at least 30 days notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper: Provided, that the findings and results of the inspection of local school property by the agents of the Board shall be reported to local boards of education and to the board of county commissioners of such units as carry insurance with the State 30 days before budget-making time in order that all school property shall be properly taken care of and made safe from fire hazards. (1955, c. 1372, art. 16, s. 8; 1981, c. 423, s. 1.)

§ 115C-543. Other property insurance.

The State Board of Education may adopt rules for providing property insurance on property insured by the Fund against all risks of direct physical loss not otherwise insured against pursuant to this Article. Losses covered by this additional insurance shall be paid out of the Fund in the same manner as fire and extended coverage losses.

Each local school administrative unit that elects to purchase this additional insurance shall pay a premium in accordance with rates fixed by the Board. This additional insurance shall be subject to the provisions and stipulations on policy forms approved by the State Board. (1987, c. 312, s. 1.)

§§ 115C-544 through 115C-546: Reserved for future codification purposes.

ARTICLE 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

Period	*Fraction*
10/1/97 to 9/30/98	One-fifteenth (1/15)
10/1/98 to 9/30/99	Two twenty-ninths (2/29)
10/1/99 to 9/30/00	One-fourteenth (1/14)
After 9/30/00	Five sixty-ninths (5/69)

(c) The Fund shall be administered by the Department of Public Instruction. (1987, c. 622, s. 12; c. 813, s. 20; 1989 (Reg. Sess., 1990), c. 1066, s. 28(b); 1991, c. 689, s. 260; 1995 (Reg. Sess., 1996), c. 631, s. 15; 1996, 2nd Ex. Sess. c. 13, s. 2.2; 1997-221, s. 26; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-284, s. 7.33(b).)

Cross References. — As to the purpose of The Excellent Schools Act, Session Laws 1997-221, see the Editor's note under G.S. 115C-105.38A.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), as amended by Session Laws 2006-248, ss. 41.1, 41.2, and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make a final report to the 2007 General Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The Commission shall terminate upon the filing of its final report.

Editor's Notes. — Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 15, provides for the amendment of subsection (b) by deleting "minus two million five hundred thousand dollars ($2,500,000)" at the end of the first sentence. Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides that section 15 of the act becomes effective "30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2." The contingency was met in October 2003, when Wake Count became the last school system to receive targeted funding under the program.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 2001-416, s. 1(a), provides: "Notwithstanding any other provision of law, the State Treasurer shall defer the issuance of any of the following until after January 1, 2002:

"(1) State of North Carolina Clean Water Bonds authorized in S.L. 1998-132.

"(2) State of North Carolina Natural Gas Bonds authorized for the construction of natural gas facilities in S.L. 1998-132.

"(3) State of North Carolina Public School Building Bonds authorized for public school building capital improvements in S.L 1995-631."

Session Laws 2003-284, s. 7.33(a), provides: "The Public School Building Capital Fund is transferred from the Office of State Budget and Management to the Department of Public Instruction, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2009-451, s. 2.2(f), provides:

"Notwithstanding the provisions of G.S. 115C-546.1, the Secretary of Revenue shall transfer the funds specified in G.S. 115C-546.1(b) to the State Controller for deposit in Nontax Budget Code 19978 (Intrastate Transfers) during the 2009-2011 fiscal biennium to offset continued operations of the State's public schools."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claims Raised in Answer. — Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1, Rule 15(a). Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.

(a) Of the monies credited to the Fund by the Secretary of Revenue pursuant to G.S. 115C-546.1(b), the State Board of Education may allocate up to one million dollars ($1,000,000) each year to the Department of Public Instruction. These funds shall be used by the Plant Operation Section of the School Support Division to assist each local school administrative unit with effective energy and environmental management, effective water management, hazardous material management, clean air quality, and engineering support for safe, effective environmental practices. The remainder of the monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by April 15 of each year on the effectiveness of the program in accomplishing its purpose and on any other information requested by the Committee.

(b) Counties shall use monies in the Fund for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings; for equipment to implement a local school technology plan that is approved pursuant to G.S. 115C-102.6C; or for both. Monies used to implement a local school technology plan shall be transferred to the State School Technology Fund and allocated by that Fund to the local school administrative unit for equipment.

As used in this section, "public school buildings" only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings, for the purchase of land for public school buildings, or for equipment to implement a local school technology plan, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs and its school technology needs can be met in a more timely fashion through the allocation of financial resources previously allocated for purposes other than school building needs or school technology needs and not restricted for use in meeting public school building needs or school technology needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and school technology needs and may allocate the funds it receives under this Article for purposes other than school building needs or school technology needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund allocated for capital projects shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Monies in the Fund transferred to the State Technology Fund do not require a local match.

Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement.

(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

(1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.

(2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the State average effective tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:

  a. "Effective county tax rate" means the actual county rate for the previous fiscal year, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.

  b. "State average effective tax rate" means the average effective county tax rates for all counties.

  c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(3) No county shall have to provide matching funds required under subsection (c) of this section.

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.

(5) A county may not use monies in this Fund to pay for school technology needs. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Reg. Sess., 1992), c. 1030, s. 30; 1997-221, s. 27; 2005-276, s. 31.1(hh); 2005-344, s. 15.2; 2006-66, s. 7.15; 2006-259, s. 8(i); 2008-107, s. 7.18(a), (b).)

Local Modification. — Edgecombe and Nash Counties and local school administrative units located in those counties: 1987, c. 813, s. 18.2.

Cross References. — As to the purpose of The Excellent Schools Act, Session Laws 1997-221, see the Editor's note under G.S. 115C-105.38A.

Editor's Note. — Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws 2007-323, s. 31.16.2(a)-(c), provides: "(a) ADM Funding Adjustment. — Notwithstanding G.S. 115C-546.2(a), the amount that would otherwise be allocated to counties under that subsection for fiscal year 2007-2008 from the Public School Building Capital Fund is reduced as follows:

"(1) If the amount of a county's Medicaid payments that are assumed by the State for fiscal year 2007-2008 under Section 31.16.1.(a) of this act exceeds the allocation the county would receive under this section based on its per average daily membership, the amount of the county's allocation from the Fund is reduced by sixty percent (60%) of the amount the county would receive based on its average daily membership.

"(2) If the amount of a county's Medicaid payments that are assumed by the State for fiscal year 2007-2008 under Section 31.16.1.(a) of this act does not exceed the allocation the county would receive under this section based on its per average daily membership, the amount of the county's allocation from the Fund is reduced by an amount equal to sixty percent (60%) of the county's Medicaid payments that are assumed by the State for fiscal year 2007-2008.

"(b) Restriction. — In fiscal year 2007-2008, a county must use a portion of the revenue that is available to it, as a result of the assumption by the State of part of the county's Medicaid payments, for the purposes set out in G.S. 115C-546.2(b). The portion that must be used for these purposes is an amount equal to the difference between what the county would receive under G.S. 115C-546.2(a) based on its per average daily membership and the adjusted amount it receives under subsection (a) of this section.

"(c) County Hold Harmless. — If the amount of the county's Medicaid costs and Medicare Part D clawback payments assumed by the State for fiscal year 2007-2008, less the amount by which the county's ADM funding is reduced under subsection (a) of this section, does not equal or exceed five hundred thousand dollars ($500,000), the State must reimburse the county for the difference, but not less than one hundred dollars ($100.00).

"The Secretary of the Department of Health and Human Services must certify to the Secretary of Revenue the amount of the county's Medicaid costs and Medicare Part D clawback payments assumed by the State under section 31.16.1.(a) of this act. To obtain the revenue for the hold harmless distribution, the Secretary of Revenue must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the hold harmless payments.

"The Secretary of Revenue must estimate a county's hold harmless amount and send the county ninety percent (90%) of the estimated amount with the sales tax distribution made under G.S. 105-472 for March of 2008. At the end of the 2007-2008 fiscal year, the Secretary must determine the county's actual hold harmless amount for the 2007-2008 fiscal year and send the remainder of the county's hold harmless amount to the county by August 15, 2008."

Session Laws 2007-323, s. 31.16.2(d), provides in part: "Subsections (a) and (b) of this section apply to allocations from the Public School Building Capital Fund for fiscal year 2007-2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 7.18(b), effective July 1, 2008, was codified as the second paragraph of subsection (a) of this section at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 7.18(a), effective July 1, 2008, in subsection (a), inserted the first two sentences and substituted "The remainder of the monies in" for "Monies" in the third sentence.

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claim Raised in Answer. — Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1, Rule 15(a). Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

Nonpublic Schools.

Part 1. Private Church Schools and Schools of Religious Charter.

§ 115C-547. Policy.

In conformity with the Constitutions of the United States and of North Carolina, it is the public policy of the State in matters of education that "No human authority shall, in any case whatever, control or interfere with the rights of conscience," or with religious liberty and that "religion, morality and knowledge being necessary to good government and the happiness of mankind . . . the means of education shall forever be encouraged." (1979, c. 505; 1981, c. 423, s. 1.)

Legal Periodicals. — For comment, "The State and Sectarian Education: Regulation to Deregulation," see 1980 Duke L.J. 801.

For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

Purpose. — The evident purpose of Parts 1 (G.S. 115C-547 et seq.) and 2 (G.S. 115C-555 et seq.) of Article 39 of Chapter 115C is to loosen, rather than tighten, the standards for nonpublic education in North Carolina. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Cited in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

OPINIONS OF ATTORNEY GENERAL

Requirements for Home School. — Parents who educate their child in a home school which has not met the requirements of Article 39 (G.S. 115C-547 et seq.) of Chapter 115C, but has been created as a satellite by another recognized home school, are not in compliance with the Compulsory Attendance Law. See opinion of Attorney General to Mr. Charles C. McConnell, Superintendent, Haywood County Schools, 55 N.C.A.G. 86 (1986).

§ 115C-548. Attendance; health and safety regulations.

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to these schools so that they can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that materials are provided to these schools so that they can provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information may be provided electronically or on the Division's Web page. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that information is available to these schools so that they can provide information on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500. (1979, c. 505; 1981, c. 423, s. 1; 2004-118, s. 4; 2007-59, s. 3; 2007-126, s. 3.)

Editor's Note. — Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 6, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 7, provides: "This act becomes effective July 1, 2007, and applies beginning with the 2007-2008 school year. However, during the 2007-2008 school year, year-round schools may comply with the provisions of this act by providing the required information no later than September 1, 2007."

Effect of Amendments. — Session Laws 2007-59, s. 3, effective July 1, 2007, added the third paragraph. See Editor's note for applicability.

Session Laws 2007-126, s. 3, effective June 27, 2007, and applicable beginning with the 2008-2009 school year, added the fourth paragraph.

CASE NOTES

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under G.S. 115C-378 a child may attend public school. Second, under the same section, a child may attend an "approved," "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets the requirements of G.S. 115C-547 et seq. Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of G.S. 115C-555 et seq. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Applied in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

§ 115C-549. Standardized testing requirements.

Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1; 1987, c. 738, s. 180(b); 2004-199, s. 30(a).)

CASE NOTES

Applied in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

§ 115C-550. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1; 2004-199, s. 30(b).)

CASE NOTES

Applied in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

§ 115C-551. Voluntary participation in the State programs.

Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not limited to the high school competency testing and statewide testing programs. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-552. New school notice requirements; termination.

(a) Any new school to which this Part relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Part applies shall notify a duly authorized representative of the State of North Carolina upon termination of the school. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-553. Duly authorized representative.

The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Part shall be designated by the Governor. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-554. Requirements exclusive.

No school, operated by any church or other organized religious group or body as part of its religious ministry, which complies with the requirements of this Part shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 505; 1981, c. 423, s. 1.)

Legal Periodicals. — For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

Part 2. Qualified Nonpublic Schools.

§ 115C-555. Qualification of nonpublic schools.

The provisions of this Part shall apply to any nonpublic school which has one or more of the following characteristics:

(1) It is accredited by the State Board of Education.

(2) It is accredited by the Southern Association of Colleges and Schools.
(3) It is an active member of the North Carolina Association of Independent Schools.
(4) It receives no funding from the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1.)

Legal Periodicals. — For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

Purpose. — The evident purpose of Parts 1 (G.S. 115C-547 et seq.) and 2 (G.S. 115C-555 et seq.) of Article 39 of Chapter 115C is to loosen, rather than tighten, the standards for nonpublic education in North Carolina. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Each subdivision of this section is equally specific and discrete and stands on its own footing. And this section clearly requires that only one of the "characteristics" which it sets out be present. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

OPINIONS OF ATTORNEY GENERAL

Requirements for Home School. — Parents who educate their child in a home school which has not met the requirements of Article 39 (G.S. 115C-547 et seq.) of Chapter 115C, but has been created as a satellite by another recognized home school, are not in compliance with the Compulsory Attendance Law. See opinion of Attorney General to Mr. Charles C. McConnell, Superintendent, Haywood County Schools, 55 N.C.A.G. 86 (1986).

§ 115C-556. Attendance; health and safety regulations.

Each qualified nonpublic school shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to each qualified nonpublic school so that the school can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that materials are provided to each qualified nonpublic school so that the school can provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information may be provided electronically or on the Division's Web page. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also ensure that information is available to each qualified nonpublic school so that the school can provide information on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500. (1979, c. 506; 1981, c. 423, s. 1; 2004-118, s. 5; 2007-59, s. 4; 2007-126, s. 4.)

Editor's Note. — Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 6, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 7, provides: "This act becomes effective July 1, 2007, and applies beginning with the 2007-2008 school year. However, during the 2007-2008 school year, year-round schools may comply with the provisions of this act by providing the required information no later than September 1, 2007."

Effect of Amendments. — Session Laws 2007-59, s. 4, effective July 1, 2007, added the third paragraph. See Editor's note for applicability.

Session Laws 2007-126, s. 4, effective June 27, 2007, and applicable beginning with the 2008-2009 school year, added the fourth paragraph.

CASE NOTES

There are four ways by which school-aged children in this State may comply with school attendance statutes. First, under G.S. 115C-378 a child may attend public school. Second, under the same section, a child may attend an "approved," "nonpublic school" which maintains the required records and conducts its curriculum concurrently with the local public school. Third, a child may attend a "private church school or school of religious charter" which meets the requirements of G.S. 115C-547 et seq. Fourth, a child may attend a "nonpublic school" which "qualifies" by meeting the requirements of G.S. 115C-555 et seq. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Home Instruction of Children. — Plaintiff's home instruction of his school-age children was not prohibited by compulsory school attendance statutes. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

§ 115C-557. Standardized testing requirements.

Each qualified nonpublic school shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1; 1987, c. 738, s. 180(c); 2004-199, s. 30(c).)

CASE NOTES

Applied in Duro v. District Att'y, 712 F.2d 96 (4th Cir. 1983).

Cited in Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

§ 115C-558. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each qualified nonpublic school shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each qualified nonpublic school shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1; 2004-199, s. 30(d).)

CASE NOTES

Cited in Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

§ 115C-559. Voluntary participation in the State programs.

Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not limited to the high school competency testing and statewide testing programs. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-560. New school notice requirements; termination.

(a) Any new school to which this Part relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Part applies shall notify a duly authorized representative of the State of North Carolina upon termination of the school. (1979, c. 506; 1981, c. 423, s. 1.)

Legal Periodicals. — For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

Cited in Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

§ 115C-561. Duly authorized representative.

The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Part shall be designated by the Governor. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-562. Requirements exclusive.

No qualifying nonpublic school, which complies with the requirements of this Part, shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 506; 1981, c. 423, s. 1.)

Legal Periodicals. — For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

Part 3. Home Schools.

§ 115C-563. Definitions.

As used in this Part or Parts 1 and 2 of this section [Article]:

(a) "Home school" means a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household.

(b) "Duly authorized representative of the State" means the Director, Division of Nonpublic Education, or his staff. (1987 (Reg. Sess., 1988), c. 891, s. 1.)

Editor's Note. — The words "this section" in the introductory language of this section were apparently intended to read "this Article."

§ 115C-564. Qualifications and requirements.

A home school shall make the election to operate under the qualifications of either Part 1 or Part 2 of this Article and shall meet the requirements of the Part elected, except that any requirement related to safety and sanitation inspections shall be waived if the school operates in a private residence and except that testing requirements in G.S. 115C-549 and G.S. 115C-557 shall be on an annual basis. The persons providing academic instruction in a home school shall hold at least a high school diploma or its equivalent. (1987 (Reg. Sess., 1988), c. 891, s. 1.)

Legal Periodicals. — For article, "The Children We Abandon: Religious Exemptions to Child Welfare and Educational Laws as Denials of Equal Protection to Children of Religious Objectors," see 74 N.C.L. Rev. 1321 (1996).

CASE NOTES

Court Considered Home Schooling in Addressing Child's Best Interests for Custody Purposes. — The trial court did not err by looking at the child's home schooling situation in addressing his best interests and consequently changing custody in favor of his father where the boy's Tourette's syndrome, and the resulting motor and verbal tics, required specialized attention that was not being addressed by defendant/mother's home schooling, but was being addressed by the public schools where the father lived. Metz v. Metz, 138 N.C. App. 538, 530 S.E.2d 79, 2000 N.C. App. LEXIS 621 (2000).

OPINIONS OF ATTORNEY GENERAL

Notice of Intent Not Required. — The North Carolina Division of Non-Public Education is not required to accept a notice of intent to operate a home school, and the school is not required to file such notice, where the home school does not enroll any children of compulsory school attendance age. See opinion of Attorney General to The Honorable J. Russell Capps N.C. House of Representatives, 1997 N.C.A.G. 54 (8/25/97).

§ 115C-565. Requirements exclusive.

No school which complies with this Part shall be subject to any other provision of law relating to education except requirements of law respecting immunization. The Division of Nonpublic Education, Department of Administration, shall provide to home schools information about meningococcal meningitis and influenza and their vaccines. This information may be provided electronically or on the Division's Web page. The information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also provide to home schools information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information may be provided electronically or on the Division's Web page. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Division of Nonpublic Education, Department of Administration, shall also provide to home schools information on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500. This information may be provided electronically or on the Division's Web page. (1987 (Reg. Sess., 1988), c. 891, s. 1; 2004-118, s. 6; 2007-59, s. 5; 2007-126, s. 5.)

Editor's Note. — Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 6, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Session Laws 2007-59, s. 7, provides: "This act becomes effective July 1, 2007, and applies beginning with the 2007-2008 school year. However, during the 2007-2008 school year, year-round schools may comply with the provisions of this act by providing the required information no later than September 1, 2007."

Effect of Amendments. — Session Laws 2007-59, s. 5, effective July 1, 2007, added the second paragraph. See Editor's note for applicability.

Session Laws 2007-126, s. 5, effective June 27, 2007, and applicable beginning with the 2008-2009 school year, added the last paragraph.

Legal Periodicals. — For comment, "The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools," see 74 N.C.L. Rev. 1913 (1996).

Part 4. Miscellaneous Requirements.

§ 115C-566. Driving eligibility certificates; requirements.

(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Department of Administration and representatives of nonpublic schools, shall adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

(2) The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate.

(b) The Secretary of Administration shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in home schools or nonpublic schools.

(c) In accordance with rules adopted by the Secretary under this section, persons who are required to sign driving eligibility certificates that meet the conditions established in G.S. 20-11 shall obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles and shall notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets the conditions under G.S. 20-11(n)(1) or G.S. 20-11(n1). (1997-507, s. 5; 1998-212, s. 9.21(d); 1999-243, s. 6; 2006-264, s. 59(a).)

Editor's Note. — Session Laws 1997-507, s. 6, effective September 17, 1997, provides that the State Board of Education shall initiate and coordinate meetings in order to develop coordinated rules, policies, and guidelines needed to implement the act.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1998-212, s. 9.21(e) provides that every agency to which this act applies that is authorized to adopt rules to implement this act may adopt temporary rules to implement this act, and this section shall continue in effect until all rules necessary to implement this act have become effective as either temporary or permanent rules.

Session Laws 1998-212, s. 1.1 provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5 contains a severability clause.

Session Laws 1999-243, s. 10, provides: "The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act."

Session Laws 1999-243, s. 11, provides: "Section 5,6,9, and 10 of this act are effective when they become law. The remainder of this act becomes effective July 1, 2000. This act does not apply to any person who held a valid North Carolina limited learner's permit issued before December 1, 1997, who held a valid North Carolina learner's permit issued before December 1, 1997, or who was a provisional licensee and held a valid North Carolina drivers license issued before December 1, 1997. This act shall apply only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct."

§ **115C-567:** Reserved for future codification purposes.

ARTICLE 40.

Proprietary Schools.

§§ **115C-568 through 115C-583:** Recodified as G.S. 115D-87 through 115D-97 by Session Laws 1987, c. 442, s. 2.

Editor's Note. — Session Laws 1987, c. 442, s. 3 provided: "Nothing in this act shall be construed to mean that proprietary schools as defined in Article 40 of Chapter 115C and transferred to Chapter 115D by this act shall become community colleges or technical institutes or part of the Community College System, except for licensing and supervision. Specific authorization by the General Assembly shall be required before any proprietary school shall become a community college or technical institute or part of the Community College System."

G.S. 115C-579 to 115C-583 had been reserved for future codification.

TABLES OF COMPARABLE SECTIONS FOR CHAPTER 115C

Former to Present

Editor's Note. — The following table shows certain recodified G.S. sections in Chapter 115C and their comparable, new locations in the chapter.

Former Section	Present Section
115C-238.1	115C-105.20
115C-238.2	115C-105.21
115C-238.3	115C-105.27
115C-238.4	115C-105.28
115C-238.6	115C-105.29
115C-238.6A	115C-105.30
115C-238.7	115C-105.31
115C-238.8	115C-105.32

Present to Former

Editor's Note. — The following table shows certain recodified G.S. sections of Chapter 115C and their comparable, former locations in the chapter.

Present Section	Former Section
115C-105.20	115C-238.1
115C-105.21	115C-238.2
115C-105.27	115C-238.3
115C-105.28	115C-238.4
115C-105.29	115C-238.6
115C-105.30	115C-238.6A
115C-105.31	115C-238.7
115C-105.32	115C-238.8

Chapter 115D.
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115D-34. Providing local public funds for institutions previously established.
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Budgeting, Accounting, and Fiscal Management.

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115D-95. (Effective until July 1, 2010) Bonds required.
115D-95. (Effective July 1, 2010) Bonds required.
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ARTICLE 1.

General Provisions for State Administration.

§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the youth development center to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission.

The Community Colleges System Office is designated as the primary lead agency for delivering workforce development training, adult literacy training, and adult education programs in the State. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2; 1985, c. 479, s. 68; 1997-443, s. 11A.118(a); 1998-202, s. 4(p); 2000-137, s. 4(s); 2001-95, s. 5; 2005-77, s. 1.)

Community College Faculty Salary Plan. — Session Laws 2009-451, s. 8.1(a)-(c), provides: "(a)(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average community college faculty salary, therefore:

"a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

"b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

"c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

"d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

"e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

"Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

"(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

"The State Board of Community Colleges shall adopt guidelines to implement the provisions of this subdivision.

"(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for Customized Training to increase faculty salaries.

"(b) As used in this section:

"(1) 'Average faculty salary at a community college' means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

"(2) 'National average community college faculty salary' means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

"(c) The State Board of Community Colleges shall adopt guidelines to implement the provisions of this section."

For similar prior provisions, see Session Laws 2007-323, ss. 8.5(a)-(g).

Joint Legislative Study Commission on State Funded Student Financial Aid. — Session Laws 2009-451, s. 9.24(a)-(d), provides: "(a) In order to ensure all North Carolinians have access to attend undergraduate, graduate, and professional degree programs at institutions of higher education there is created the Joint Legislative Study Committee on State Funded Student Financial Aid. The Committee shall consist of 10 members. The Speaker of the House of Representatives shall appoint five members, and the President Pro Tempore of the Senate shall appoint five members. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority shall cooperate with this study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

"The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Committee. The Committee may meet at any time upon the joint call of the cochairs. Vacancies on the Committee shall be filled by the same appointing authority as made the initial appointment.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(b) The Committee shall study all of the following:

"(1) How best to use State funds to provide grants, loans, and scholarships to students for the purpose of attending undergraduate, graduate, and professional degree programs at institutions of higher education within North Carolina. As part of its study, the Committee shall also examine the availability and sustainability of existing State, federal, and private funding sources for student grants, loans, and scholarships.

"(2) How best to administer State funded student financial aid. As part of its study the Committee shall review any action or pending action by the federal government regarding the federal funding that supports the administration of student financial aid in the State. The Committee shall also examine the sustainability and efficiency of the current governance structure for awarding student financial aid at the State level and the linkage of that governance structure to federal student loan programs and to student loan programs funded through escheats.

"(3) The current governance of the North Carolina State Education Assistance Authority (NCSEAA).

"(4) The feasibility of consolidating scholarship, loan, and grant programs for North Carolinians including all programs for which eligibility is based on the Free Application for Federal Student Aid (FAFSA).

"(5) The feasibility of consolidating loans, grants, and scholarships available for teacher education students.

"(6) The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and any other criteria that make the scholarship and grant either similar to other scholarships in the same category or that make the scholarship unique from others in its category.

"(7) Marketing strategies for grant, loans, and scholarships and how to make the information more transparent, understandable, and accessible to the general public and to the students who may be interested in applying for financial aid.

"(8) Any other issues the Committee deems relevant to this study.

"(c) The Committee may make an interim report of its findings and recommendations, including any legislative recommendations, to the 2009 General Assembly, 2010 Regular Session, and shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2011 General Assembly. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

"(d) From the funds appropriated by this act to the General Assembly for the 2009-2010 fiscal year and for the 2010-2011 fiscal year, the Legislative Services Commission may allocate monies to fund the work of the Committee."

Editor's Note. — This Chapter was enacted by Session Laws 1979, c. 462, which also repealed former Chapter 115A. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in this Chapter.

Session Laws 1987, c. 564, s. 6 changed the heading of this Chapter from "Community Colleges and Technical Institutes" to "Community Colleges."

Session Laws 1989 (Reg. Sess., 1990), c. 997, s. 1 provided: "The Veterans and Military Education Program is transferred from the Department of Community Colleges and the State Board of Community Colleges to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a)."

For provisions of Session Laws 2009-339 preamble and ss. 1 through 11, which created the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission, see notes at G.S. 115C-10 and 120-70.80.

OPINIONS OF ATTORNEY GENERAL

Programs of community colleges must be undertaken for educational purposes; business and service ventures, not for educational purposes, are improper. See opinion of Attorney General to Mr. John M. Jenkins, Director, N.C. Vocational Textiles School, 41 N.C.A.G. 790 (1972), rendered under former Chapter 115A.

§ 115D-1.1. Discretion in admissions.

(a) Notwithstanding G.S. 115D-1, a student under the age of 16 may enroll in a community college if the following conditions are met:

(1) The president of the community college or the president's designee finds, based on criteria established by the State Board of Community Colleges, that the student is intellectually gifted and that the student has the maturity to justify admission to the community college; and

(2) One of the following persons approves the student's enrollment in a community college:

a. The local board of education, or the board's designee, for the local school administrative unit in which the student is domiciled or is enrolled.

b. The administrator, or the administrator's designee, of the nonpublic school in which the student is enrolled.

c. The person who provides the academic instruction in the home school in which the student is enrolled.
d. The designee of the board of directors of the charter school in which the student is enrolled.
e. The administrator of the college or university where the student is enrolled.

(b) The State Board of Community Colleges, in consultation with the Department of Public Instruction, shall adopt rules to implement this section. (2001-312, s. 2; 2001-487, s. 76; 2005-77, ss. 2, 3; 2009-46, s. 1.)

Editor's Note. — Session Laws 2001-312, s. 4, as amended by Session Laws 2001-487, s. 76, and Session Laws 2005-77, s. 2, made this section effective July 28, 2001, applicable beginning with the 2001-2002 academic year and expired September 1, 2008. As further amended by Session Laws 2009-46, s. 1, Session Laws 2001-312, s. 4, as amended, reenacted this section effective March 1, 2009.

Session Laws 2001-312, s. 1(a)-(c), provide for The Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, to study the measures used by the constituent institutions to make admissions, placement, and advanced placement decisions regarding incoming freshmen and to assess the various uses made of those measures and the validity of those measures with regard to a student's academic performance and as predictors of a student's future academic performance, as well as whether other alternative measures may be equally valid or more accurate as indicators of a student's academic performance. In the study, particular consideration is to be given to whether or not to eliminate, continue, or change the emphasis placed on the Scholastic Aptitude Test (SAT) and ACT Assessment for North Carolina students as a mandatory university admissions measure. The study is also to review incorporating the State's testing program into admissions, placement, and advanced placement decisions. Based on its findings, the Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, is authorized to develop recommendations to improve the measures used to assess a student's academic performance, to adopt alternative measures, or to use various combinations of both to determine more accurately a student's academic knowledge and performance. The Board of Governors may make an interim report to the Joint Legislative Education Oversight Committee no later than March 1, 2002, and shall submit a final report by December 1, 2003. It is recommended that the study continue beyond the final report date.

§ 115D-1.2. Learn and Earn Online program.

(a) Notwithstanding 115D-1, a student enrolled in grades 9, 10, 11, or 12 and participating in the Learn and Earn Online program shall be permitted to enroll in online courses through a community college for college credit. Students participating in the Learn and Earn Online program may enroll in Learn and Earn Online courses regardless of the college service areas in which they reside.

(b) The State Board of Community Colleges, in consultation with the Department of Public Instruction, shall adopt rules to implement this section beginning with the 2007-2008 school year. (2007-323, s. 7.27(j); 2009-451, s. 7.10(i).)

Learn and Earn Online. — Session Laws 2009-451, s. 7.10(a)-(h), provides: "(a) Funds are appropriated in this act for the Learn and Earn Online program. This program will allow high school students to enroll in college courses to qualify for college credit. Online courses shall be made available to students through The University of North Carolina and the North Carolina Community College System.

"(b) Funds shall be used for:

"(1) Course tuition and only those technology and course fees and textbooks required for course participation; and

"(2) A liaison position in the Department of Public Instruction to coordinate with The University of North Carolina and the North Carolina Community College System and to communicate course availability and related information to high school administrators, teachers, and counselors.

"(c) The State Board of Education shall determine the allocation of Learn and Earn

Online course offerings across the State.

"(d) The State Board of Education shall allot funds for tuition, fees, and textbooks on the basis of and after verification of the credit hour enrollment of high school students in Learn and Earn Online courses. The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office for courses offered by community colleges.

"(e) The University of North Carolina program shall report to The University of North Carolina Board of Governors, and the North Carolina Community College program shall report to the State Board of Community Colleges. The Department of Public Instruction shall report to the State Board of Education.

"(f) Both The University of North Carolina and the North Carolina Community College System shall provide oversight and coordination, including coordination with the Department of Public Instruction and with the North Carolina Virtual Public School (NCVPS), to avoid course duplication.

"(g) The programs shall establish course quality and rigor standards and shall conduct course evaluations to ensure that the online courses meet the established standards.

"(h) Local school administrative units may purchase textbooks for Learn and Earn Online courses through the Department of Public Instruction's textbook warehouse in the same manner as textbooks that have been adopted for public school students by the State Board of Education."

For similar prior provisions, see Session Laws 2007-323, s. 7.27(a)-(i).

Session Laws 2009-451, s. 7.10(j), provides: "For the 2009-2011 biennium, high school students attending a nonpublic school may enroll in any Learn and Earn Online course with space available that has been offered to but not filled by any eligible public school student. Notwithstanding subsection (h) of this section, nonpublic school students shall be responsible for supplying their own textbooks and other instructional materials."

Session Laws 2009-451, s. 7.10(k), provides: "Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert but shall remain available for expenditure."

For similar prior provisions, see Session Laws 2008-107, s. 7.5.

Session Laws 2009-451, s. 7.10(*l*), provides: "Subsection (k) of this section becomes effective June 30, 2009."

Editor's Note. — Session Laws 2008-107, s. 8.6(a), provides: "Funds reimbursed to the Community College System for full-time equivalent (FTE) students participating in learn and earn online courses shall not revert at the end of a fiscal year, but shall remain available for expenditure up to 12 months after the close of a fiscal year."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 7.10(i), effective July 1, 2009, deleted "public school" preceding "student" in the first sentence of subsection (a).

§ 115D-2. Definitions.

As used in this Chapter:

(1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.

(2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the service area which it serves, and may offer

- a. The freshmen and sophomore courses of a college of arts and sciences, authorized by G.S. 115D-4.1;
- b. Organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
- c. Vocational, trade, and technical specialty courses and programs, and
- d. Courses in general adult education.

(3) The term "institution" refers to any institution established pursuant to this Chapter.

(4) The term "regional institution" means an institution whose service area as assigned by the State Board of Community Colleges includes three or more counties; provided, however, any institution receiving funds as a regional institution on May 1, 1987, shall continue to receive funds on that basis.

(5) The term "State Board" refers to the State Board of Community Colleges.

(6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.

(7) Repealed by Session Laws 1987, c. 564, s. 1.

(8) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1; 1979, c. 462, s. 2; c. 553; c. 896, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 761, s. 104; 1983 (Reg. Sess., 1984), c. 1034, s. 169; 1987, c. 564, s. 1; 1999-84, s. 1; 2005-103, s. 4; 2006-203, s. 35.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 35, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (8).

§ 115D-2.1. State Board of Community Colleges.

(a) The State Board of Community Colleges is established.

(b) The State Board of Community Colleges shall consist of 21 members, as follows:

(1) The Lieutenant Governor or the Lieutenant Governor's designee shall be a member ex officio.

(2) The Treasurer of North Carolina or the Treasurer's designee shall be a member ex officio.

(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.

(4) The General Assembly shall elect eight members of the State Board from the State at large in the following manner:

a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. In 1985, the Senate shall elect two members to serve terms expiring June 30, 1991. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.

b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. In 1985, the House of Representatives shall elect two members, to serve terms expiring June 30, 1991. Each subsequent regular election by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.

c. Repealed by Session Laws 1985, c. 227, s. 5.

d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.

e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.

f. At each session of the General Assembly held in an odd-numbered year, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates is submitted to each committee, then each committee shall nominate at least two persons for each place to be filled by that chamber, otherwise each committee shall nominate at least one person for each place to be filled by each of the House of Representatives and the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board.

(5) The person serving as president of the North Carolina Comprehensive Community College Student Government Association shall be an ex officio member of the State Board. If the president of the Association is unable for any reason to serve as the student member of the State Board, then pursuant to the constitution of the Association, the vice-president of the Association shall serve as the student member of the State Board. Any person serving as the student member of the State Board must be a student in good standing at a North Carolina community college. The student member of the State Board shall have all the rights and privileges of membership, except that the student member shall not have a vote.

(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the State Board of Community Colleges, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant.

(c) No person may be appointed or elected to more than two consecutive terms of six years on the State Board.

(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board shall be eligible to serve on the State Board. No spouse of a member of the General Assembly or of an officer or employee of the Community College System or of an institution under the jurisdiction of the State Board shall be eligible to serve on the State Board. No person who within the prior five years has been an employee of the Community Colleges System Office shall be eligible to serve on the State Board.

(e) The Governor shall convene the membership of the State Board on July 1, 1980, or as soon as feasible thereafter. The State Board at that meeting shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(f) At its first meeting after July 1, 1981, and every two years thereafter, the State Board shall elect from its membership a chairman and such other officers as it may deem necessary.

(g) The State Board of Community Colleges shall meet at stated times established by the State Board, but not less frequently than 10 times a year.

The State Board of Community Colleges shall also meet with the State Board of Education and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. A majority of the qualified members of the State Board shall constitute a quorum for the transaction of business.

(h) Whenever any vacancy shall occur in the appointed membership of the State Board, the chairman shall inform the appropriate appointing authority of the vacancy.

(i) The State Board of Community Colleges may declare vacant the office of an appointed or elected member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the State Board shall notify the appropriate appointing or electing authority of any vacancy. (1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c. 479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428; 1987 (Reg. Sess., 1988), c. 1102, s. 2; 1991, c. 83, s. 1; 1993, c. 69, s. 2; 1995, c. 192, s. 1; c. 470, ss. 3, 4; 1997-456, ss. 18, 19; 1999-61, ss. 1, 2; 1999-84, s. 7; 2006-31, s. 1; 2006-201, s. 2(c); 2007-278, s. 3.)

Editor's Note. — Session Laws 1981, c. 47, which amended this section by inserting "(or a person designated by the Lieutenant Governor)" in subdivision (b)(1), provided, in s. 7: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in this place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, s. 9.3, provides for the development and implementation of a Joint Initiative for Teacher Education and Recruitment. See note at G.S. 115C-295.

Trans-fatty acids prohibited. — Session Laws 2005-276, s. 9.28(a) and (b), provides: "(a) For nutritional purposes, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt policies governing any food programs operated by the constituent institutions or local community colleges that prohibit: (i) the use of cooking oils in those food programs that contain trans-fatty acids, or (ii) the sale of processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

"(b) The policies adopted in compliance with this section shall be implemented internally by August 1, 2006, and shall apply to all contracts entered into or renewed on or after that date."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-201, s. 2(c), which added subsection (b1), is applicable to covered persons and legislative employees, gifts received, acts and conflicts of interests that arise, and offenses committed on or after January 1, 2007.

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 115D-3. Community Colleges System Office; staff.

The Community Colleges System Office shall be a principal administrative department of State government under the direction of the State Board of Community Colleges, and shall be separate from the free public school system of the State, the State Board of Education, and the Department of Public Instruction. The State Board has authority to adopt and administer all policies, regulations, and standards which it deems necessary for the operation of the System Office.

The State Board shall elect a President of the North Carolina System of Community Colleges who shall serve as chief administrative officer of the Community Colleges System Office. The compensation of this position shall be fixed by the State Board from funds provided by the General Assembly in the Current Operations Appropriations Act.

The President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Chapter, who shall be elected by the State Board on nomination of the President. The compensation of the staff members elected by the Board shall be fixed by the State Board of Community Colleges, upon recommendation of the President of the Community College System, from funds provided in the Current Operations Appropriations Act. These staff members shall include such officers as may be deemed desirable by the President and State Board. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the State Board. In addition, the President shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the State Board on recommendation of the President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. The State Board of Community Colleges shall have all other powers, duties, and responsibilities delegated to the State Board of Education affecting the Community Colleges System Office not otherwise stated in this Chapter. (1963, c. 448, s. 23; 1971, c. 1244, s. 14; 1975, c. 699, s. 5; 1979, c. 462, s. 2; c. 896, s. 3; 1979, 2nd Sess., c. 1130, ss. 1, 2; 1981, c. 859, s. 35.2; 1983, c. 479, s. 4; c. 717, s. 26; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1985 (Reg. Sess., 1986), c. 955, ss. 19, 20; 1987, c. 564, s. 2; 1993, c. 522, s. 6; 1999-84, s. 8.)

Editor's Note. — Session Laws 2005-276, s. 8.1(b), provides: "The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project."

Session Laws 2005-276, s. 8.5, provides: "The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

"Notwithstanding any other provision of law, funds appropriated to the Community Colleges System Office for multicampus colleges or off-campus centers shall be used only for the administration of the multicampus college or off-campus center for which the funds were allotted. These funds shall not be transferred to any other campus or center, or used for any other purpose."

Session Laws 2005-276, s. 10.40D(a)-(d), provides: "(a) The Secretary of Health and Human Services and the President of the Community Colleges System shall jointly convene a study group to review and consider the use of medication aides to perform the technical aspects of medication administration. The study group shall consist of members representing at least the following entities and licensed health care facilities and providers:

"(1) Appointed by the Secretary of Health and Human Services:

"a. Adult care homes.

"b. Home care agencies.

"c. Ambulatory surgical centers.

"d. Hospitals.

"e. Facilities providing mental health, developmental disabilities, and substance abuse services.

"f. Nursing homes.

"g. The nursing profession, as recommended by the Board of Nursing.

"(2) Community colleges appointed by the President of the Community Colleges System.

"(3) The Secretary of the Department of Correction.

"(4) Others as may be appointed by the Secretary of Health and Human Services or the President of the Community Colleges System.

"(b) The study group shall address at least the following in its study and its recommendations regarding medication aide performance of the technical aspects of medication administration:

"(1) Training and competency evaluation of medication aides;

"(2) Training standards;

"(3) Ongoing review and evaluation of medication aide training; and

"(4) Requirements for supervision of medication aides.

"(c) The Secretary of Health and Human Services and the President of the Community Colleges System shall report the progress and recommendations of the study group to the 2006 Regular Session of the 2005 General Assembly upon its convening, and the 2007 General Assembly upon its convening. Recommendations to the 2006 Regular Session of the 2005 General Assembly may include proposed legislation. A copy of the report shall be provided to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division at the same time as the report is submitted to the General Assembly.

"(d) The Department of Health and Human Services shall continue its pilot program on the use of medication aides and shall report on the status of the pilot programs at the same time and to the same persons as the study group report to the General Assembly."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 8.10(a)-(c), provides: "(a) Of the funds appropriated to the Community Colleges System Office for facilities and equipment needs, the sum of fifteen million dollars ($15,000,000) shall be used to create the Community College Facilities and Equipment Fund. This Fund shall be used for the purpose of awarding grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar for every one non-State dollar.

"(b) Beginning September 1, 2006, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant.

"(c) The Community Colleges System Office shall develop guidelines related to the administration of the Community College Facilities and Equipment Fund and to the selection of projects to receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the System Office must publish the proposed guidelines on the System Office's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board shall accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

"(1) An amendment that corrects a spelling or grammatical error.

"(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 8.10, provides: "(a) Funds in the amount of fifteen million dollars ($15,000,000) are appropriated in section 2 of this act for the 2007-2008 fiscal year to the Community College Facilities and Equipment Fund. These funds shall be used to award grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges, shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. Priority shall be given to projects that (i) are consistent with the college's strategic plan, (ii) have a high potential for promoting economic growth, and (iii) did not receive a grant during the 2006-2007 fiscal year. Also, projects shall be distributed geographically throughout the State. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

"(b) Beginning September 1, 2007, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 8.1(a), which expires June 30, 2009, provides: "Notwithstanding any other provision of law, and consistent with the authority established in G.S. 115D-3, the President of the North Carolina Community College System may reorganize the System Office in accordance with recommendations and plans submitted to and approved by the State Board of Community Colleges."

Session Laws 2008-107, s. 8.1(b) provides: "This section expires June 30, 2009."

Session Laws 2008-107, s. 9.7(c), provides: "The University of North Carolina and Community Colleges System Office shall report by September 1, 2008, and annually thereafter, to the Joint Legislative Education Oversight Commission, the State Board of Education, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

"(1) The courses and programs within the 2+2 E-Learning Initiative;

"(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;

"(3) The total number of teachers currently in the State's classrooms, by local school administrative unit, who have taken part in this initiative;

"(4) The change in the number of teachers available to schools since the program's inception;

"(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and

"(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 115D-4. (Applicable to design projects, etc., for which bids or proposals are solicited before April 30, 2010 — See notes) Establishment of institutions; capital improvements.

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of

G.S. 115D-4 is set out twice. See notes.

Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2; c. 896, s. 4; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 717, ss. 27-27.2; 1985 (Reg. Sess., 1986), c. 955, s. 21; 1987, c. 564, s. 3; 2006-203, s. 36.)

Section Set Out Twice. — The section above is applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited before April 30, 2010. For the section as applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010, see the following section, also numbered G.S. 115D-4.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 36, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second paragraph, deleted "provided that the Governor may consult with the Advisory Budget Commission before giving approval" following "Governor" in the first sentence, and in the second sentence, substituted "State Budget Act" for "Executive Budget Act."

Session Laws 2009-229, s. 1, effective June 30, 2009, and applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010, deleted "capital improvements" from the end of the section catchline, and deleted the former second paragraph, which read: "The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter."

CASE NOTES

Questions to Be Determined by State Courts. — Whether the plaintiff had any rights under former G.S. 115A-4, whether the plaintiff was covered under that section and whether the plaintiff's school met the required education and occupational needs, was maintaining proper standards, and was in the administrative area were questions involving former G.S. 115A-4, and had to be determined by State and not federal courts. Harrell v. Trustees of Beaufort County Technical Inst., 354 F. Supp. 50 (E.D.N.C. 1973).

At Different Locations. — A board of trustees has full authority to establish two community colleges in different locations and as separate units. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961), decided under former G.S. 116.49.

§ 115D-4. (Applicable to design projects, etc., for which bids or proposals are solicited on or after April 30, 2010 — See notes) Establishment of institutions.

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support

G.S. 115D-4 is set out twice. See notes.

required for the institution, and that funds sufficient to provide State financial support of the institution are available. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2; c. 896, s. 4; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 717, ss. 27-27.2; 1985 (Reg. Sess., 1986), c. 955, s. 21; 1987, c. 564, s. 3; 2006-203, s. 36; 2009-229, s. 1.)

Section Set Out Twice. — The section above is applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010. For the section as applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited before April 30, 2010, see the preceding section, also numbered G.S. 115D-4.

Effect of Amendments. — Session Laws 2009-229, s. 1, effective June 30, 2009, and applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010, deleted "capital improvements" from the end of the section catchline, and deleted the former second paragraph, which read: "The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter."

§ 115D-4.1. College transfer program approval; standards for programs.

(a) Repealed by Session Laws 1995, c. 288, s. 1, effective September 1, 1995.

(b) The State Board of Community Colleges may approve the addition of the college transfer program to a community college. If addition of the college transfer program to an institution would require a substantial increase in funds, State Board approval shall be subject to appropriation of funds by the General Assembly for this purpose.

(c) Addition of the college transfer program shall not decrease an institution's ability to provide programs within its basic mission of vocational and technical training and basic academic education.

(d) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the addition of the college transfer program to institutions.

(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. The criteria and standards shall require all college transfer programs to continue to meet the accreditation standards of the Southern Association of Colleges and Schools.

The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.

(f) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges in accordance with G.S. 116-11(10b) on the academic performance of that community college's transfer students. If the State Board of Community Colleges finds that college transfer students from a community college are not consistently performing adequately at a four-year college, the Board shall review the community college's program and determine what steps are necessary to remedy the problem. The Board shall report annually to the General Assembly on the reports it receives and on what steps it is taking to remedy problems that it finds. (1987, c. 564, s. 4; 1995, c. 288, s. 1; 1999-84, s. 2.)

Cross References. — For provisions regarding implementation and monitoring of the plan for transfer of credits between North Carolina institutions of higher education as enacted by Session Laws 1995 (Reg. Sess., 1996), c. 625, see the editor's note under G.S. 115D-5.

Editor's Note. — Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provides for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, capital improvement projects, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall adopt the following rules to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

G.S. 115D-5(b) is set out twice. See notes.

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(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate.

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent.

(b) **(Effective until July 1, 2010)** In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under

Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit instruction and 96 contact hours of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section.

(b) **(Effective July 1, 2010)** In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit instruction and 96 contact hours of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in

G.S. 115D-5(b) is set out twice. See notes.

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early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Recodified as G.S. 115D-5.1(a) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(e) Repealed by Session Laws 1999-84, s. 3, effective May 21, 1999.

(f) A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Commission on Governmental Operations, on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Community Colleges System Office as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4.1, the courses shall be offered on a self-supporting basis.

(i) Recodified as G.S. 115D-5.1(c) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) Recodified as G.S. 115D-5.1(b) by Session Laws 2005-276, s. 8.4(a), effective July 1, 2005.

(*l*) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process.

(m) The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor.

(n) The North Carolina Community Colleges System Office shall provide the Department of Revenue with a list of all community colleges, including name, address, and other identifying information requested by the Department of Revenue. The North Carolina Community Colleges System Office shall update this list whenever there is a change.

(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by December 1 of each year.

(p) The North Carolina Community College System may offer courses, in accordance with the lateral entry program of study established under G.S. 115C-296(c1), to individuals who choose to enter the teaching profession by lateral entry.

(q) Repealed by Session Laws 2009-451, s. 8.9, effective July 1, 2009.

(r) The State Board of Community Colleges shall develop curriculum and continuing education standards for courses of instruction in American Sign Language and shall encourage community colleges to offer courses in American Sign Language as a modern foreign language.

(s) The State Board of Community Colleges may retain and budget fees charged to students taking the General Education Development (GED) test. Fees collected for this purpose shall be used only to (i) offset the costs of the GED test, including the cost of scoring the test, (ii) offset the costs of printing GED certificates, and (iii) meet federal and State reporting requirements related to the test.

(t) The purpose of the first semester of the Gateway to College Program is to address additional support to successfully complete the program. Students may need to take developmental courses necessary for the transition to more challenging courses; therefore, the State Board of Community Colleges shall (i) permit high school students who are enrolled in Gateway to College Programs to enroll in developmental courses based on an assessment of their individual student needs by a high school and community college staff team and (ii) include this coursework in computing the budget FTE for the colleges. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c.

1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4; 1998-111, s. 3; 1998-202, s. 4(q); 1999-84, ss. 3, 9; 1999-243, s. 9; 2000-137, s. 4(t); 2001-111, s. 1; 2001-427, s. 9(b); 2001-487, s. 47(e); 2004-124, s. 8.4; 2005-193, s. 1; 2005-198, s. 3; 2005-247, s. 3; 2005-276, ss. 8.4(a), 8.6; 2005-395, s. 25; 2006-203, s. 37; 2007-154, s. 2(a); 2007-484, ss. 29(a), 35; 2008-107, ss. 8.11, 8.17, 8.18; 2009-208, s. 1; 2009-451, ss. 8.8, 8.9, 8.11(d), (e); 2009-570, s. 42; 2009-575, s. 5.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2010. The second version of subsection (b) set out above is effective July 1, 2010.

Cross References. — As to the use of community college personnel or facilities by private businesses, see G.S. 115D-20(12).

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 84, provides: "(a) In-Plant Training. Effective beginning with the 1992 fall quarter, the State Board of Community Colleges shall ensure that the following requirements are met with respect to in-plant training established pursuant to G.S. 115D-5(d):

"(1) The instruction provided shall not duplicate or supplant existing training or training for normal job turnover;

"(2) The community college shall not contract with a company to provide in-plant training to its own employees but it may contract with such a company to provide the cost of replacement of an employee who is providing the actual training and is released from regular work responsibilities. Reimbursement may also be provided for appropriate supplies and materials, as determined by the State Board of Community Colleges;

"(3) The community college's course outline and a fiscal plan for operating the course shall be approved by the board of trustees. If approval is not given, the course shall be discontinued and no FTE shall be generated for that course;

"(4) A reasonable limitation on hours per employee shall be established; and

"(5) A community college's FTE earnings shall not exceed a reasonable percentage of the direct cost of the training.

"The State Board of Community Colleges shall conduct a comprehensive review of in-plant training to clarify the role of the system as well as the general policies and procedures that have been developed to provide instruction for business and industry. The Board shall report the results of its study, together with any recommendations, including any legislative proposals, to the General Assembly by March 1, 1993.

"(b) Sheltered Workshops. Effective beginning with the 1992 fall quarter, the State Board of Community Colleges shall ensure that the following considerations are addressed within the administration of the occupational extension courses offered in sheltered workshop settings and established pursuant to G.S. 115D-5(c):

"(1) A reasonable limitation on instructional hours per student shall be established;

"(2) An educational and fiscal plan shall be approved by the board of trustees. If approval is not given, the course shall be discontinued and no FTE shall be generated for that course;

"(3) There shall be a policy prohibiting the duplication of training and the supplanting of costs; and

"(4) A community college's FTE earnings shall not exceed a reasonable percentage of the direct cost of the training.

"The State Board of Community Colleges shall conduct a comprehensive review of training provided to sheltered workshops and Adult Developmental Activities Program (ADAP) centers to clarify the role of the system as well as the general policies and procedures that have been developed to provide instruction at these locations. The Board shall report the results of its study, together with any recommendations, including any legislative proposals, to the General Assembly by March 1, 1993."

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 179, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1992-93 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1992-93 fiscal year."

Session Laws 1993, c. 321, s. 104(b), provides: "The State Board of Community Colleges shall not approve funding for any in-plant training programs authorized by G.S. 115D-5(d) without first making a written finding that the public's interest in the program predominates over the private interests of the company. The State Board shall adopt rules for determining when private interests predominate over the public's interest."

Session Laws 1993, c. 321, s. 119, effective July 1, 1993, provides that the State Board of Community Colleges shall undertake a comprehensive review of the mission of the North Carolina Community College System in order to ensure that it is well-prepared to meet changing educational and economic needs as the State moves into the Twenty-first Century, that the Monitoring Committee of the Commission on the Future of the North Carolina Community College System shall serve as an independent body to monitor and review the issues, that the State Board of Community Colleges shall make interim reports to the Joint Legislative Education Oversight Committee no later than April 15, 1994, and no later than January 15, 1995, and that thereafter, the State Board shall make annual reports to the Joint Legislative Education Oversight Committee by January 15 of each year until the Monitoring Committee terminates, at which time the State Board shall make a final report.

Session Laws 1993, c. 321, s. 321, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 18, provides that the State Board of Community Colleges shall require that all new programs it approves be developed using a regional approach, unless there are extenuating circumstances, and expresses the legislative intent to increase the number of regional program offerings in community colleges and to eliminate as much duplication as possible. Quarterly reports are to be made to the Joint Legislative Education Oversight Committee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

The designation of subsection (h) of this section was assigned by the Revisor of Statutes, the designation in Session Laws 1993, c. 492, s. 2 having been (g).

Session Laws 1995, c. 324, s. 28.3, and Session Laws 1995, c. 507, s. 28.9, provide: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1997-443, s. 9.6(a) added a subsection (j) which has been designated herein as subsection (k) at the direction of the Revisor of Statutes.

Session Laws 1997-507, s. 8, effective September 17, 1997, provides that the act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1, and that agencies are authorized to adopt temporary rules to implement the act.

Session Laws 1999-237, s. 9.15, provides that G.S. 115D-5 or any other provision of law notwithstanding, the State Board of Community Colleges shall not charge tuition or fees to volunteer firefighters and volunteer EMS workers for courses required for certification.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2001-146, s. 1, provides: "The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Department of Public Instruction shall work cooperatively to expand the opportunities for military personnel to enroll in and complete teacher education programs prior to discharge from the military. The cooperative effort shall include the expansion, as feasible, of teacher education classes and programs on military bases and at alternate nearby sites, through Internet-based course offerings, and through cooperative education programs. The cooperative effort shall also focus on the educational needs unique to active military personnel who are potential teachers or teacher assistants and ways to make the necessary classes and programs more accessible to them. A special effort shall also be made to communicate with and inform military personnel of the educational opportunities available on military bases, at alternate sites near military bases, through long-distance education, and through cooperative education."

Session Laws 2001-424, s. 30.6, provides: "The General Assembly finds that standardization of the term of contracts with community college faculty members will provide the General Assembly with the data necessary to make informed decisions regarding faculty salaries and funding for the summer term. Therefore, the State Board of Community Colleges shall require community colleges to convert all faculty contracts to nine-month contracts covering the fall and spring semesters. Faculty members currently employed for more than nine months shall be placed on supplemental contracts for the summer term. These modifications in faculty contracts shall not change the salary of any faculty member.

"All faculty members employed after the date this act [Session Laws 2001-424] becomes law [July 1, 2001] shall be placed on nine-month contracts with supplemental contracts for the summer term."

Session Laws 2001-424, s. 30.10 (a) and (b), provides: "(a)The Bureau of Training Initiatives funded by the Worker Training Trust Fund is transferred from the North Carolina Department of Labor to the North Carolina Community Colleges System, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer. The Bureau of Training Initiatives is designed to provide training services and develop new training innovations similar to the North Carolina Community Colleges System's Workforce Development programs. Consolidating these efforts at the North Carolina Community Colleges System will result in greater efficiencies and coordination.

"No changes in the organizational structure of the programs transferred under this subsection [s. 30.10(a) of Session Laws 2001-424], other than those provided by this subsection [s. 30.10(a) of Session Laws 2001-424], shall take place prior to January 1, 2002. The State Board of Community Colleges shall present a plan for such changes to the Joint Legislative Education Oversight Committee no less than 30 days before they are proposed to become effective.

"(b) The Apprenticeship program currently housed within the North Carolina Department of Labor is transferred to the North Carolina Community Colleges System, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer. Joint delivery of Apprenticeship and Community College workforce training programs will ensure coordination of program delivery and appropriate classroom training supporting the needs of the client and the employer. The community colleges already provide the majority of classroom training for Apprenticeship.

"If the transfer made by this subsection [s. 30.10(b) of Session Laws 2001-424] is subject to approval by the United States Department of Labor, the effective date of this subsection [s. 30.10(b) of Session Laws 2001-424] is the date of such approval.

"No changes in the organizational structure of the programs transferred under this subsection [s. 30.10 (b) of Session Laws 2001-424], other than those provided by this subsection [s. 30.10(b) of Session Laws 2001-424], shall take place prior to January 1, 2002. The State Board of Community Colleges shall present a plan for such changes to the Joint Legislative Education Oversight Committee no less than 30 days before they are proposed to become effective."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 8.2, provides: "It is the intent of the General Assembly to increase the number of regional program offerings in community colleges and to reduce duplication of programs by colleges that are within reasonably close proximity to each other; therefore, the State Board of Community Colleges shall review existing programs to determine which of the existing programs can be offered regionally. In developing new programs, the State Board of Community Colleges shall consider whether a regional approach can be used, and to the extent possible, shall initiate new programs on a regional basis.

"The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Education Oversight Committee on all new programs it approved and on the progress made on regional programs during the year. The report shall include the specific reasons for which each new program was approved, a progress report on regionalization of programs, and a list of program terminations approved by the State Board."

Session Laws 2003-300, s. 5(a) and (b), provides: "(a) Community College Refunds. — Upon request of the student, each community college shall:

"(1) Grant a full refund of curriculum tuition and fees to military reserve and national guard personnel called to active duty or active personnel who have received temporary or permanent reassignments as a result of military operations that make it impossible for them to complete their course requirements; and

"(2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance-learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

"(b) Upon request of the student, each community college shall:

"(1) Grant a full refund of extension registration fees to military reserve and national guard personnel called to active duty or active personnel who have received temporary or permanent reassignments as a result of military operations that make it impossible for them to complete their course requirements; and

"(2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance-learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements."

Session Laws 2004-124, s. 8.3(a)-(h), provides for the establishment of a community college faculty salary plan that (1) provides accountability to the General Assembly, (2) maintains local flexibility and autonomy for the community colleges, and (3) ensures that community college faculty members have a uniform minimum salary based on level of education, equivalent applicable experience, or both. Session Laws, 2004-124, s. 8.3(g), provides that the State Board of Community Colleges shall report on the implementation of this plan by December 1, 2004, and every year thereafter through December 1, 2009.

The first paragraph of Session Laws 2004-124, s. 8.9, effective July 1, 2004, was codified as subsection (o) of this section at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-247, s. 3, has been codified as G.S. 115D-5(q), at the direction of the Revisor of Statutes.

Session Laws 2005-198, s. 4, provides: "The State Board of Education and the State Board of Community Colleges shall submit annually to the Joint Legislative Education Oversight Committee a report on the community college program of study for lateral entry teachers established under this act. The initial report is due no later than April 1, 2006. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should continue and, if so, must include the reasons for its continuation and any recommended legislative changes needed to enhance the program."

Session Laws 2005-198, which added subsection (p), in s. 5, provides, in part that the act expires July 1, 2011. Session Laws 2007-484, s. 35, amended Session Laws 2005-198, s. 5, by deleting the sunset provision.

Session Laws 2005-276, s. 8.3(a)-(g), as amended by Session Laws 2006-66, s. 8.1(a), (b), provides: "(a) The minimum salaries for community college faculty shall be based on the following education levels:

"(1) Vocational Diploma/Certificate or Less. — This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.

"(2) Associate Degree or Equivalent. — This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.

"(3) Bachelors Degree.

"(4) Masters Degree or Education Specialist.

"(5) Doctoral Degree.

"(b) For the 2005-2006 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2005-2006
Vocational Diploma/ Certificate or Less	$29,932
Associate Degree or Equivalent	$30,373
Bachelors Degree	$32,283
Masters Degree or Education Specialist	$33,978
Doctoral Degree	$36,421

"No full-time faculty member shall earn less than the minimum salary for his or her education level.

"The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

(b1) For the 2006-2007 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary 2006-2007
Vocational Diploma/Certificate or Less	$31,728
Associate Degree or Equivalent	$32,195
Bachelors Degree	$34,220
Masters Degree or Education Specialist	$36,016
Doctoral Degree	$38,607

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

"(c)(1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:

"a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.

"b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

"c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.

"d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.

"e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

"Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

"(2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

"(3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industry Training to increase faculty salaries.

"(d) As used in this section:

"(1) 'Average faculty salary at a community college' means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.

"(2) 'National average community college faculty salary' means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

"(e) The State Board of Community Colleges shall adopt rules to implement the provisions of this section.

"(f) The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009, on the implementation of this section.

"(g) For the 2005-2006 fiscal year, funds appropriated in this act for salary increases shall be used to increase faculty and professional staff salaries by an average of two percent (2%). These increases are in addition to other salary increases provided for in this act and shall be calculated on the average salaries prior to the issuance of the compensation increase. For the 2006-2007 fiscal year, funds appropriated in this act for salary increases shall be used to increase faculty and professional staff annual salaries by six percent (6%). Colleges may provide additional increases from funds available.

"The State Board of Community Colleges shall adopt rules to ensure that these funds are used only to move faculty and professional staff to the respective national averages. These funds shall not be transferred by the State Board or used for any other budget purpose by the community colleges."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-154, s. 2(b), provides: "The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by October 1, 2007, on the implementation of this section."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 7.21(a), provides: "The State Board of Education shall:

"(1) Review the lateral entry program and identify and remove from it barriers to the lateral entry of skilled individuals from the private sector into the teaching profession;

"(2) Reduce the coursework requirements for lateral entry by consolidating the required competencies into fewer courses and fewer semester hours of coursework; and

"(3) Provide additional opportunities for individuals to complete coursework online and at community colleges."

Session Laws 2009-451, s. 7.21(b), provides: "The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2010, on its implementation of this section."

Session Laws 2009-451, s. 8.24, provides: "The management flexibility reduction for the North Carolina Community College System shall be allocated by the State Board of Community Colleges in a manner that accounts for the unique needs of each college and provides for the equitable distribution of funds to the institutions consistent with G.S. 115D-5(a). Before taking reductions to instructional budgets, the community colleges shall consider reducing budgets for senior and middle management personnel and for programs that have both low-enrollment and low-postgraduate success. Colleges shall minimize the impact on student support services and on the retraining of dislocated workers. The community colleges shall also review their institutional funds to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 37, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second paragraph of subsection (f), deleted "and the Advisory Budget Commission" following "Commission on Governmental Operations," and made a minor stylistic change.

Session Laws 2008-107, ss. 8.11, 8.17, 8.18, effective July 1, 2008, in subsection (b), made a minor grammatical change and inserted "and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR)" preceding "Provided further, tuition"; and added subsections (s) and (t).

Session Laws 2009-208, s. 1, effective June 26, 2009, in subsection (m), deleted the last sentence, which read: "The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors."

Session Laws 2009-451, ss. 8.8, 8.9, and 8.11(d), effective July 1, 2009, in subsection (o), substituted "December 1" for "October 1" in the last sentence; and deleted subsection (q), which read: "The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on October 1 of each year on the use of community college facilities by private businesses; and in the fourth sentence in subsection (b) inserted "for up to six hours of credit per academic semester" and substituted "age 65 or older who are qualified as legal residents of North Carolina" for "attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens."

Session Laws 2009-451, s. 8.11(e), effective July 1, 2010, deleted "prison inmates" preceding "members of the North Carolina State Defense Militia" near the end of the third sentence.

Session Laws 2009-570, s. 42, effective August 28, 2009, substituted "costs" for "course" in clause (ii) of subsection (s).

Session Laws 2009-575, s. 5, effective July 1, 2009, in subsection (b), in the next-to-last sentence, inserted "instruction and 96 contact hours of noncredit instruction."

§ 115D-5.1. Workforce Development Programs.

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(b) through (d) Repealed by Session Laws 2008-107, s. 8.7(a), effective July 1, 2008.

(e) There is created within the North Carolina Community College System the Customized Training Program. The Customized Training Program shall offer programs and training services to assist new and existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the Customized Training Program, the President of the North Carolina Community College System shall determine that:

(1) The business is making an appreciable capital investment;
(2) The business is deploying new technology;
(2a) The business or individual is creating jobs, expanding an existing workforce, or enhancing the productivity and profitability of the operations within the State; and
(3) The skills of the workers will be enhanced by the assistance.

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

(1) The total amount of funds received by a company under the Customized Training Program;
(1a) The types of services sought by the company, whether for new, expanding, or existing industry.
(2) The amount of funds per trainee received by that company;
(3) The amount of funds received per trainee by the community college delivering the training;
(4) The number of trainees trained by the company and community college; and
(5) The number of years that company has been funded.

(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt guidelines that allow the Customized Training Program to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces.

(f2) Funds available to the Customized Training Program shall not revert at the end of a fiscal year but shall remain available until expended. Up to ten percent (10%) of the college-delivered training expenditures and up to five percent (5%) of the contractor-delivered training expenditures for the prior fiscal year for Customized Training may be allotted to each college for capacity building at that college.

(f3) Of the funds appropriated in a fiscal year for the Customized Training Programs, the State Board of Community Colleges may approve the use of up to eight percent (8%) for the training and support of regional community college personnel to deliver Customized Training Program services to business and industry.

(g) The State Board shall adopt guidelines to implement this section. At least 20 days before the effective date of any criteria or nontechnical amendments to guidelines, the State Board must publish the proposed guidelines on the Community Colleges System Office's web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the State Board has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2005-276, s. 8.4(a), (b); 2005-445, s. 3; 2008-107, s. 8.7(a); 2009-451, s. 8.14(c); 2009-523, s. 2(b); 2009-570, s. 41.)

Editor's Note. — Subsections (a) through (c) of this section were formerly codified as G.S. 115D-5 (d), (k) and (i), respectively. They were recodified as G.S. 115D-5.1(a)-(c), by Session Laws 2005-276, s. 8.4(a).

Subsections (f) and (g) were formerly part of subsection (e) and have been renumbered at the direction of the Revisor of Statutes.

Session Laws 2005-276, s. 8.4(c), provides: "Notwithstanding any other provision of law, the State Board of Community Colleges may use funds appropriated to it for the New and Expanding Industry Training Program to operate programs under the Customized Industry Training Program."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2008-107, s. 8.7(b), provides: "The State Board of Community Colleges shall transfer funds appropriated for the New and Expanding Industry Training Program and the Focused Industrial Training Program to the Customized Industry Training Programs appropriation. This transfer shall be completed by September 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 8.14(b), provides: "Projects that create or retain jobs in North Carolina shall receive first priority for funds appropriated for the Customized Training Program."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 8.7(a), effective July 1, 2008, deleted subsections (b) through (d), related to the North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines; in subsection (e), substituted "Training" for "Industry," deleted "CIT" three times, and substituted "to assist new and" for "as new options for assisting"; deleted "and" at the end of subdivision (e)(2) and added subdivision (e)(2a); and added subsections (f1) through (f3).

Session Laws 2009-451, s. 8.14(c), effective July 1, 2009, added subdivision (f)(1a).

Session Laws 2009-523, s. 2(b), effective August 26, 2009, substituted "adopt guidelines" for "adopt rules and policies" in subsection (f1) and in the first sentence of subsection (g); added the second through fourth sentences in the introductory paragraph of (g); and added subdivisions (g)(1) and (g)(2).

Session Laws 2009-570, s. 41, effective August 28, 2009, substituted "Customized Training Program" for "CIT" at the end of subdivision (f)(1); deleted "and the Focused Industrial Training Program" following "Customized Training Program" in subsection (f1); and substituted "Customized Training Program services" for "Customized Industry Training Program services" in subsection (f3).

§ 115D-6. Withdrawal of State support.

The State Board of Community Colleges may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this Chapter in the event that:

(1) The required local financial support of an institution is not provided;
(2) Sufficient State funds are not available;
(3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or
(4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 8; 1979, 2nd Sess., c. 1130, s. 1.)

§ 115D-7. Establishment of private, nonprofit corporations.

The State Board of Community Colleges shall encourage the establishment of private, nonprofit corporations to support the community college system. The President of the Community Colleges System with the approval of the State Board of Community Colleges, may assign employees to assist with the establishment and operation of such nonprofit corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the community college system.

The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the State Board of Community Colleges a copy of the annual financial audit report of the private nonprofit corporation. (1987, c. 383, s. 1; 1999-84, s. 10.)

§ 115D-8: Repealed by Session Laws 1999-84, s. 4, effective May 21, 1999.

§ 115D-9. (For applicablility, see Editor's note) Powers of State Board regarding certain fee negotiations, contracts, and capital improvements.

(a) The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board under G.S. 115D-4 shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter.

(b) Notwithstanding G.S. 143-341(3), the State Board of Community Colleges may, with respect to design, construction, repair, or renovation of buildings, utilities, and other State or non-State funded property developments of the North Carolina Community College System requiring the estimated expenditure of public money of one million dollars ($1,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
(2) Develop procedures governing the responsibilities of the North Carolina Community College System and its community colleges to per-

form the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the State Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(c) The State Board may delegate its authority under subsection (b) of this section to a community college if the community college is qualified under guidelines adopted by the State Board and approved by the State Building Commission and the Director of the Budget.

(d) The North Carolina Community College System shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(e) A contract may not be divided for the purpose of evading the monetary limit under this section.

(f) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded under subsections (b) or (c) of this section.

(g) The State Board shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.
(2) The estimated cost of each project along with the actual cost.
(3) The name of each person awarded a contract under this section.
(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g). (2009-229, s. 2.)

Editor's Note. — Session Laws 2009-229, s. 3, made this section effective June 30, 2009, and applicable to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010.

§§ 115D-10, 115D-11: Reserved for future codification purposes.

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees.

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies. No member of the General Assembly may be appointed to a local board of trustees for a community college.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, s. 104; 1979, c. 462, s. 2; 1985, c. 757, s. 147; 1987, c. 564, ss. 10, 12; 1987 (Reg. Sess., 1988), c. 1037, s. 111; 1991, c. 283, s. 1; 1995, c. 470, s. 1; 2009-549, s. 19.)

Local Modification. — Anson and Union: 1999-60, s. 2; College of the Albemarle: 1997-12, s. 1.

Effect of Amendments. — Session Laws 2009-549, s. 19, effective August 28, 2009, and applicable only to appointments made on or after the effective date of this act, and not applicable to any reappointment of a member of the General Assembly serving on any board of trustees for a community college on that date, added the last sentence in the first paragraph of subsection (a).

OPINIONS OF ATTORNEY GENERAL

The board of trustees of a technical college may not employ one of its members as a part-time instructor. See opinion of Attorney General to Mr. Garrett Dixon Baily, Attorney for Mayland Technical College, 55 N.C.A.G. 28 (1985).

Under § 115D-19, board of trustees of a community college has the power to remove one of its members. See opinion of Attorney General to Mr. N. Jerry Owens, Jr., Secretary, Board of Trustees of Rockingham Community College, 55 N.C.A.G. 52 (1985).

§ 115D-13. Terms of office of trustees.

(a) The regular terms of trustees appointed in 1981 and trustees appointed in 1987 shall be extended for one year. The term of one or more trustees, as appropriate, elected pursuant to G.S. 115D-12 may be extended for one year so that these terms will be staggered, unless they are already staggered.

(b) Except for the one year extensions of terms set forth in subsection (a) of this section, and for the ex officio member, as the terms of trustees currently in office expire, their successors shall be appointed for four-year terms.

All terms shall commence on July 1 of the year. (1963, c. 448, s. 23; 1977, c. 823, s. 5; 1979, c. 462, s. 2; 1985, c. 58; 1989, c. 521, s. 1.)

§ 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.

The board of trustees of each institution shall be a body corporate with powers to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution in accordance with the provisions and purposes of this Chapter. The official title of each board shall be "The Trustees of ________" (filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions by private persons or purchased with funds provided by the tax-levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Community Colleges. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax-levying authorities, except as provided for in G.S. 115D-14, shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more counties forming a joint institution the contract provided for in G.S. 115D-71 provides otherwise. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note.)

Editor's Note — Session Laws 1999-115, s. 4, provides that s. 3, which repealed local modifications to this section by Session Laws 1995, c. 399, s. 3, becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date.

§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.

(a) The board of trustees of any institution organized under this Chapter may, with the prior approval of the North Carolina Community Colleges System Office, convey a right-of-way or easement for highway construction or for utility installations or modifications. When in the opinion of the board of trustees the use of any other real property owned or held by the board of trustees is unnecessary or undesirable for the purposes of the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease the property. The board of trustees may dispose of any personal property owned or held by the board of trustees without approval of the State Board of Community Colleges.

Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any real or personal property under this subsection. Personal property also may be disposed of under procedures adopted by the North Carolina Department of Administration. The proceeds of any sale or lease shall be used for capital outlay purposes, except as provided in subsection (b) of this section.

(b) Subject to rules adopted by the State Board, if real or personal property is donated to a community college to support a specific educational purpose, the board of trustees may use the proceeds from the sale or lease of the property according to the terms of the donation. The board of trustees shall use the procedures authorized under Article 12 of Chapter 160A of the General Statutes when selling or leasing property under this subsection. (1969, c. 338; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1998-72, s. 1; 1998-217, s. 39; 2001-82, s. 1.)

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Montgomery: 1995, c. 154, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note) Nash: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Sampson: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note), 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Wilson: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Asheville-Buncombe Technical Community College: 2000-99, ss. 1, 2; Board of Trustees of College of the Albemarle: 2002-57, s. 1 (expiring December 31, 2005); Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expiring December 31, 2005); Mayland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81, and as amended by 2006-5, s. 1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917.

Editor's Note. — Session Laws 1999-115, s. 4, provides that s. 3, which repealed local modifications to this section (made by: 1993-613, 1995-154, s. 3; 1995-399, ss. 1, 3; and 1995-706), becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date.

§ 115D-15.1. Disposition, acquisition, and construction of property by community college.

(a) Disposition. — Notwithstanding the provisions of G.S. 115D-14, 115D-15, and 160A-274, the board of trustees of a community college may, in connection with additions, improvements, renovations, or repairs to all or part of its property, lease, sell, or otherwise dispose of any of its property to the county in which the property is located for any price and on any terms negotiated between the board of trustees of the community college and the board of county commissioners.

(b) Transfer. — An agreement under subsection (a) of this section shall require the county to transfer the property back to the board of trustees of the community college when any financing agreement entered into by the county to finance the additions, improvements, renovations, and repairs has been satisfied.

Notwithstanding the transfer of property to the county, the provisions of subsection (d) of this section, G.S. 143-129, and G.S. 143-341 apply to the capital improvement project.

(c) Acquisition and Construction. — Notwithstanding the provisions of G.S. 115D-14 and G.S. 115D-20(3), the board of trustees of a community college may acquire, by any lawful method, any interest in real or personal property in the county in which the community college is located or in its service delivery area for use by the board of trustees. The board of trustees may contract for the construction, equipping, expansion, improvement, renovation, repair, or otherwise making available for use by the board of trustees of the community college of all or part of the property upon any terms negotiated between the board of trustees of the community college and the board of county commissioners.

(d) Approval. — The actions of a board of trustees of a community college taken pursuant to this section are subject to the approval of the State Board of Community Colleges.

(e) Contract Responsibility. — A county's obligations under a financing contract entered into by the county to finance improvements to real or personal property pursuant to this section shall be the responsibility of the county and not the responsibility of the board of trustees of the community college. (1999-115, s. 2; 2007-484, s. 29(b).)

Local Modification. — Burke: 2007-35, s. 1(a) (as to building located at 2128 South Sterling Street in Morganton); Cleveland: 2009-35, s. 1; Board of Trustees of Beaufort County Community College: 2009-168, s. 1.1; Cleveland Community College: 2009-35, s. 1; Richmond Community College and City of Laurinburg: 2008-72 (expires December 31, 2011); Western Piedmont Community College: 2007-35, s. 1(a).

§ 115D-16. Elective officials serving as trustees.

The office of trustee of any institution established or operated pursuant to this Chapter is hereby declared to be an office which may be held by the holder of any elective office, as defined in G.S. 128-1.1(d), in addition to and concurrently with those offices permitted by G.S. 128-1.1. Appointments made on or before July 1, 1985, by boards of county commissioners or local boards of education of their own members as trustees are hereby validated, ratified, and confirmed. (1979, c. 462, s. 2; 1985, c. 773.)

OPINIONS OF ATTORNEY GENERAL

Member of the Parks and Recreation Authority who holds an appointment as trustee of a community college may also hold an elective office in the local government of the town. See opinion of Attorney General to Mr. Daniel C. Oakley, General Counsel, Department of Environment and Natural Resources, 2003 N.C.A.G. 6 (8/19/03).

§ 115D-17. Compensation of trustees.

Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Community Colleges, for cost of travel, meals, and lodging while performing their official duties. The reimbursement of the trustees from State funds shall not exceed the amounts permitted in G.S. 138-5. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 2001-424, s. 30.15A; 2001-513, s. 6.)

§ 115D-18. Organization of boards; meetings.

At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who may be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for a period of one year but shall be eligible for reelection by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three months. Meetings may be called by the chairman of the board, a majority of the trustees, or the chief administrative officer of the institution. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 2007-197, s. 1.)

§ 115D-19. Removal of trustees.

(a) Should the State Board of Community Colleges have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the State Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at that meeting a representative of the State Board of Community Colleges may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it.

(b) A board of trustees may declare vacant the office of a member who does not attend three consecutive, scheduled meetings without justifiable excuse. A board of trustees may also declare vacant the office of a member who, without justifiable excuse, does not participate within six months of appointment in a trustee orientation and education session sponsored by the North Carolina Association of Community College Trustees. The board of trustees shall notify the appropriate appointing authority of any vacancy. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1989, c. 521, s. 2; 1995, c. 470, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Under this section, the board of trustees of a community college has the power to remove one of its members. See opinion of Attorney General to Mr. N. Jerry Owens, Jr., Secretary, Board of Trustees of Rockingham Community College, 55 N.C.A.G. 52 (1985).

Repeated Absences as Ground for Removal. — Repeated absences from meetings, at some point, constitutes neglect of duty sufficient to permit a board of trustees to remove a board member for failure to discharge his duties. See opinion of Attorney General to Mr. N. Jerry Owens, Jr., Secretary, Board of Trustees of Rockingham Community College, 55 N.C.A.G. 52 (1985).

§ 115D-20. Powers and duties of trustees.

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

(1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Community Colleges.

(2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Community Colleges. Trust-

ees may delegate the authority of employing such other personnel to its president or chief administrative officer.

(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. Provided, notwithstanding any law or administrative rule to the contrary, local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges. Provided, further, that high school students may be permitted to take noncredit courses in safe driving on a self-supporting basis during the academic year or the summer.

(5) To receive and accept donations, gifts, bequests, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Community Colleges.

(6) To provide all or part of the instructional services for the institution by contracting with other public or private organizations or institutions in accordance with regulations and standards adopted by the State Board of Community Colleges.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students.

(8) If a board of trustees of an institution provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(9) To encourage the establishment of private, nonprofit corporations to support the institution. The president, with approval of the board of trustees, may assign employees to assist with the establishment and operation of such corporation and may make available to the corporation office space, equipment, supplies and other related resources; provided, the sole purpose of the corporation is to support the institution. The board of directors of each private, nonprofit corporation shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the corporation. The board of directors shall transmit to the board of trustees a copy of the annual financial audit report of the private nonprofit corporation.

(10) To enter into guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(10a) To enter into loan agreements under the Energy Improvement Loan Program pursuant to Part 3 of Article 36 of Chapter 143 of the General Statutes.

(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.15.

(12) Notwithstanding the provisions of this Chapter, a community college may permit the use of its personnel or facilities, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for the specific purposes set out in G.S. 66-58(c)(3a) and G.S. 66-58(c)(3d). The board of trustees of a community college must specifically approve any use of facilities or personnel under this subdivision. The State Board shall adopt rules to implement this subdivision, G.S. 66-58(c)(3a), and G.S. 66-58(c)(3d).

(13) To enter into a public/private partnership in which all of the following conditions are met:

a. The agreement is approved in advance by the State Board of Community Colleges.
b. The board of trustees agrees to lease community college land to a private entity on condition that the entity construct a facility on the leased land.
c. The facility will be jointly owned and used by the private entity and the community college.
d. The board of trustees is not authorized to lease the facility as lessee under a long-term lease or capital lease from the private entity as lessor.
e. The board of trustees is not authorized to finance its portion of the facility by entering into an installment contract or other financing contract with the private entity.
f. State bond funds shall not be used to pay for construction of that part of the facility to be owned and used by the private entity.
g. The provisions of G.S. 143-341(3)a. apply to the construction of a facility under this subsection.

(14) To comply with the design and construction requirements regarding energy efficiency and water use in the Sustainable Energy-Efficient Buildings Program under Article 8C of Chapter 143 of the General Statutes. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 901, s. 2; 1983, c. 378, s. 1; c. 596, s. 1; 1985, c. 191; 1987, c. 383, s. 2; 1993 (Reg. Sess., 1994), c. 775, s. 7; 1998-111, s. 1; 2001-368, s. 2; 2003-286, s. 1; 2005-247, s. 2; 2006-259, s. 21; 2007-476, s. 1; 2008-203, s. 2; 2009-119, s. 1.)

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note.)

Cross References. — As to reporting requirements pertaining to the use of community college facilities by private businesses, see G.S. 115D-5(q). As to information and financial assistance for nursing students and inactive nurses, see Article 9B of Chapter 90, G.S. 90-171.50 et seq. As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

Editor's Note. — Session Laws 1983, c. 596, which added the first proviso in subdivision (4), provided in s. 2 that any local cooperative program developed under the act is subject to approval by the State Board of Community Colleges.

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 82, effective July 1, 1992, provides: "(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. However, a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs. In no event shall a community college contract with a local school administrative unit to provide high school level courses.

"(b) The Joint Committee on College Transfer shall review this issue as it relates to community colleges and constituent institutions of The University of North Carolina. This review shall include an assessment of what constitutes college level course work. The Committee shall report the results of this review to the General Assembly and to the Joint Legislative Education Oversight Committee by March 1, 1993.

"(c) The State Board of Community Colleges shall study the entire Huskins Bill issue. The Board shall report the results of its study, together with any recommendations, including any legislative proposals, to the General Assembly by March 1, 1993.

"(d) This section shall remain in effect until changed by the General Assembly."

Session Laws 1999-115, s. 4, provides that s. 3, which repealed local modifications to this section by Session Laws 1995, c. 399, s. 3, becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date.

Session Laws 2005-276, s. 8.5, provides: "The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

"Notwithstanding any other provision of law, funds appropriated to the Community Colleges System Office for multicampus colleges or off-campus centers shall be used only for the administration of the multicampus college or off-campus center for which the funds were allotted. These funds shall not be transferred to any other campus or center, or used for any other purpose."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2008-203, s. 7, provides, in part, that the amendment to this section by s. 2 of the act is applicable to every major facility construction project, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, and every major facility renovation project, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, of a public agency, as defined in G.S. 143-135.36 as enacted in s. 1 of the act, that has not entered the schematic design phase prior to August 8, 2008.

Effect of Amendments. — Session Laws 2008-203, s. 2, effective August 8, 2008, added subdivision (14). See Editor's note for applicability.

Session Laws 2009-119, s. 1, effective June 19, 2009, added the last sentence in subdivision (4).

CASE NOTES

Employment Duties. — This section, making one of the duties of the Board of Trustees to elect a president of a college and to elect or employ all other personnel of the institution, essentially makes the Board of Trustees the de facto employers of community college president and other employees, and the board should be held to the same standards as other employers for the tortious acts of its employees. Caldwell v. Linker, 901 F. Supp. 1010 (M.D.N.C. 1995).

§ 115D-20.1. Policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events.

(a) As used in this section:

(1) "Tobacco product" includes cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snus, snuff, and any other items containing or reasonably resembling tobacco or tobacco products.

(2) "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

(b) Local community college boards of trustees may adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

(c) The policy adopted by a local community college board of trustees may include the following elements:

(1) Adequate notice of the policy to students, parents, the public, and school personnel.

(2) Posting of signs prohibiting at all times the use of tobacco products by any person in and on community college property.

(3) Requirements that community college personnel develop plans for successful implementation of and compliance with the policy.

(4) Permission for tobacco products to be included in instructional or research activities in community college buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product.

(d) Nothing in G.S. 130A-498, G.S. 143-595 through G.S. 143-601, or any other section prohibits a local community college board of trustees from adopting and enforcing a more restrictive policy on the use of tobacco in community college buildings, in community college facilities, on community college campuses, or at community college-related or community college-sponsored events, and in or on other community college property.

(e) The North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission shall work with local community college boards of trustees to provide assistance with the development and implementation of the policy including providing information regarding smoking cessation and prevention resources. (2008-95, ss. 2, 3.)

Editor's Note. — Session Laws 2008-95, s. 4, made this section effective July 11, 2008. Session Laws 2008-95, s. 3, effective July 11, 2008, was codified as subsection (e) of this section at the direction of the Revisor of Statutes.

§ 115D-21. Traffic regulations; fines and penalties.

(a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon shall apply to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System shall, upon conviction thereof, be punished as prescribed in this section and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing contained in this section shall be construed as in any way interfering with the ownership and control of the streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees; shall be printed; and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Violation of any such rules, regulations, or ordinances, is an infraction punishable by a penalty of not more than one hundred dollars ($100.00).

Regardless of whether an institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed five dollars ($5.00), which funds shall be retained in the institution and expended in the discretion of the trustees. The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus. (1971, c. 795, ss. 1-3; 1979, c. 462, s. 2; 1983, c. 420, s. 4; 1985, c. 764, s. 38.)

Cross References. — As to post-towing procedure for motor vehicles towed pursuant to the provisions of this section, see G.S. 20-219.9 et seq.

§ 115D-21.1. Campus law enforcement agencies.

(a) The board of trustees of any community college may establish a campus law enforcement agency and employ campus police officers. These officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the community college employing the officer and that portion of any public road or highway passing through the property and immediately adjoining it, wherever located.

(b) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into the municipality's jurisdiction and to determine the circumstances under which this extension of authority may be granted.

(c) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into the county's jurisdiction and to determine the circumstances under which this extension of authority may be granted. (1999-68, s. 1.)

§ 115D-22. State Retirement System for Teachers and State Employees; social security.

Solely for the purpose of applying the provisions of Chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this Chapter are included within the definition of the term "public school," and the institutional employees are included within the definition of the term "teacher," as these terms are defined in G.S. 135-1. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-23. Workers' Compensation Act applicable to institutional employees.

The provisions of Chapter 97 of the General Statutes of North Carolina, the Workers' Compensation Act, shall apply to all institutional employees. The State Board of Community Colleges shall make the necessary arrangements to carry out those provisions of Chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as defined in the act, of an employee regardless of the portion of his wage paid from other than State funds.

The board of trustees of each institution shall be liable for workers' compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover workers' compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 714, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

CASE NOTES

Sovereign Immunity. — Trial court erred in denying the state community college's motion to dismiss the insurance guaranty association's declaratory judgment action seeking a determination that it was entitled to reimbursement for "covered claims" it paid due to the fact that the state community college worker's compensation insurer became insolvent; although the insured did not dispute that its net worth as of the relevant date was in excess of $50 million, which would ordinarily allow the insurance guaranty association the right to recover, the state community college asserted it had a defense of sovereign immunity and the insurance guaranty association was unable to show that the general assembly, while allowing the state community college to purchase insurance coverage, had waived the right to raise sovereign immunity as a defense against the insurance guaranty association's actions for reimbursement from the state. N.C. Ins. Guar. Ass'n v. Bd. of Trs. of Guilford Tech. Cmty. College, 185 N.C. App. 518, 648 S.E.2d 859, 2007 N.C. App. LEXIS 1810 (2007).

§ 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.

The board of trustees of any institution, by obtaining liability insurance as provided in G.S. 115D-53, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in G.S. 115D-53. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement of liability insurance and while such insurance is in force. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

Editor's Note. — Section 115D-53, referred to in this section, was rewritten by Session Laws 1981, c. 157, and has been recodified. The subject matter of G.S. 115D-53 is now covered by G.S. 115D-58.12.

Legal Periodicals. — For article, "Statutory Waiver of Municipal Immunity upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

CASE NOTES

Cited in Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

Sovereign Immunity. — Trial court erred in denying the state community college's motion to dismiss the insurance guaranty association's declaratory judgment action seeking a determination that it was entitled to reimbursement for "covered claims" it paid due to the fact that the state community college worker's compensation insurer became insolvent; although the insured did not dispute that its net worth as of the relevant date was in excess of $50 million, which would ordinarily allow the insurance guaranty association the right to recover, the state community college asserted it had a defense of sovereign immunity and the insurance guaranty association was unable to show that the general assembly, while allowing the state community college to purchase insurance coverage, had waived the right to raise sovereign immunity as a defense against the insurance guaranty association's actions for reimbursement from the state. N.C. Ins. Guar. Ass'n v. Bd. of Trs. of Guilford Tech. Cmty. College, 185 N.C. App. 518, 648 S.E.2d 859, 2007 N.C. App. LEXIS 1810 (2007).

§ 115D-25. Purchase of annuity or retirement income contracts for employees.

Notwithstanding any provision of law relating to salaries or salary schedules for the pay of faculty members, administrative officers, or any other employees of community colleges, the board of trustees of any of the above institutions may authorize the finance officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for reductions in salaries below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to in this section shall be effected under any necessary regulations and procedures adopted by the State Board of Community Colleges and on forms prepared by the State Board of Community Colleges. Notwithstanding any other provisions of this section or law, the amount by which the salary of an officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees. (1965, c. 366; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1987, c. 564, s. 11; 1989, c. 526, s. 2.)

§ 115D-25.1. Dependent care assistance program.

The State Board of Community Colleges is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The State Board may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 14(c); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

§ 115D-25.2. Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of community college boards of trustees, the State Board of

Community Colleges is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 14(g); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1989 (Reg. Sess., 1990), c. 1059, s. 2 having been 115D-25.1.

§ 115D-25.3. Voluntary shared leave.

The State Board of Community Colleges, in cooperation with the State Board of Education and the State Personnel Commission, shall adopt rules and policies to allow any employee at a community college to share leave voluntarily with an immediate family member who is an employee of a community college, public school, or State agency; and with a coworker's immediate family member who is an employee of a community college, public school, or State agency. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave. (2003-9, s. 3; 2003-284, s. 30.14A(c).)

Cross References. — As to voluntary shared leave for public school employees, see G.S. 115C-12.2. As to voluntary shared leave for employees of state agencies, see G.S. 126-8.3.

Editor's Note. — Session Laws 2003-9, s. 4, provides: "Prior to the adoption of any rules pursuant to this Act:

"(a) The president of any community college shall allow any employee of that community college to share leave voluntarily with an immediate family member, as defined in Section 3 of this Act, who is an employee of a community college, public school, or State agency; and

"(b) Community colleges, public schools, and State agencies shall permit eligible employees to receive leave pursuant to this Act."

§ 115D-26. Conflict of interest.

All local trustees and employees of community colleges covered under this Chapter are subject to the conflict of interest provisions found in G.S. 14-234. (1981, c. 157, s. 5; 1987, c. 564, s. 9; 2001-409, s. 5.)

Editor's Note. — Session Laws 2001-409, which amended this section, provides in s. 10, that prosecutions for offenses committed before the effective dates of the provisions of the act are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

ARTICLE 2A.

Privacy of Employee Personnel Records.

§ 115D-27. Personnel files not subject to inspection.

Personnel files of employees of boards of trustees, former employees of boards of trustees, or applicants for employment with boards of trustees shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the board of trustees which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form. (1991, c. 84, s. 3.)

§ 115D-28. Certain records open to inspection.

Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1991, c. 84, s. 3; 2007-508, s. 2.)

§ 115D-29. Confidential information in personnel files; access to information.

(a) All information contained in a personnel file, except as otherwise provided in this Article, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such [an] inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

(b) Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record.

(c) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former community college employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees. (1991, c. 84, s. 3; 2008-194, s. 11(c).)

Effect of Amendments. — Session Laws 2008-194, s. 11(c), effective August 8, 2008, inserted the subsection (a) and (b) designations and added subsection (c).

§ 115D-30. Remedy of employee objecting to material in file.

An employee, former employee or applicant for employment who objects to material in his file may place in his file a statement relating to the materials he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading, and the material has not been placed there in connection with a grievance procedure established by the board of trustees, may seek the removal of such material from the file through grievance procedures to be established by each board of trustees. (1991, c. 84, s. 3.)

CASE NOTES

No Private Right of Action. — Employee's motion to add a claim under G.S. 115D-30 was denied because that statute did not explicitly provide for a private right of action, and the employee had not followed the administrative procedures provided for in the statute. Jenkins

v. Trs. of Sandhills Cmty. College, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 25252 (M.D.N.C. Dec. 3, 2002).

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143C-4-5, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:

a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.

b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.

c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been

approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library books, except for funds appropriated to the Equipment Reserve Fund, shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The System Office shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year.

(d) State funds appropriated to the State Board of Community Colleges for the Equipment Reserve Fund shall be allocated to institutions in accordance with the equipment allocation formula for the fiscal period. An institution to which these funds are allocated shall spend the funds only in accordance with an equipment acquisition plan developed by the institution and approved by the State Board.

These funds shall not revert and shall remain available until expended in accordance with an approved plan.

(e) If receipts for community college tuition and fees exceed the amount certified in General Fund Codes at the end of a fiscal year, the State Board of Community Colleges shall transfer the amount of receipts and fees above those budgeted to the Equipment Reserve Fund. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146; 1987, c. 564, ss. 9, 12; 1995, c. 324, s. 16; 1998-212, s. 10.2(a); 1999-84, s. 11; 1999-237, s. 9.3(a); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 38.)

Cross References. — As to budgeting, accounting and fiscal management, see G.S. 115D-54 to 115D-58.12. As to match requirements applicable to bond proceeds for new construction, exceptions, and provisions for allocation where a community college has failed to meet matching requirements by July 1, 2006, see the editor's note at G.S. 116D-41.

Editor's Note. — The Article, including G.S. 115D-45, referred to in this section, was rewritten by Session Laws 1981, c. 157, and has been recodified. The subject matter of G.S. 115D-45 is now covered by G.S. 115D-54.

Session Laws 2005-276, s. 8.12, provides: "Notwithstanding G.S. 115D-31 or any other provision of law, funds appropriated in this act for community college capital projects do not have to be matched by local funds."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 8.10(a)-(c), provides: "(a) Of the funds appropriated to the Community Colleges System Office for facilities and equipment needs, the sum of fifteen million dollars ($15,000,000) shall be used to create the Community College Facilities and Equipment Fund. This Fund shall be used for the purpose of awarding grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar for every one non-State dollar.

"(b) Beginning September 1, 2006, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant.

"(c) The Community Colleges System Office shall develop guidelines related to the administration of the Community College Facilities and Equipment Fund and to the selection of projects to receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the System Office must publish the proposed guidelines on the System Office's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board shall accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

"(1) An amendment that corrects a spelling or grammatical error.

"(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-323, s. 8.10, provides: "(a) Funds in the amount of fifteen million dollars ($15,000,000) are appropriated in section 2 of this act for the 2007-2008 fiscal year to the Community College Facilities and Equipment Fund. These funds shall be used to award grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges, shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. Priority shall be given to projects that (i) are consistent with the college's strategic plan, (ii) have a high potential for promoting economic growth, and (iii) did not receive a grant during the 2006-2007 fiscal year. Also, projects shall be distributed geographically throughout the State. No individual grant may exceed the sum of one million dollars ($1,000,000).

"These grants shall be awarded on a matching basis of one State dollar ($1.00) for every one non-State dollar ($1.00).

"(b) Beginning September 1, 2007, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws

2006-203, s. 38, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-4-5" for "G.S. 143-31.4" in subdivision (a)(1).

OPINIONS OF ATTORNEY GENERAL

Matching Funds Required for Capital Improvement Disbursement. — Subdivision (a)(1) of this section obligates the State Board of Community Colleges to require local community colleges to provide matching funds before it disburses capital improvement money from the 1998 Appropriations Bill. See opinion of Attorney General to H. Martin Lancaster President NC Community College System, 1998 N.C.A.G. 56 (12/18/98).

§ 115D-31.1. Liability insurance.

Notwithstanding the provisions of G.S. 115D-32(a)(2)b2 and any other provision of the law to the contrary, boards of trustees of all institutions in this Chapter may use State funds to pay the lawful premiums of liability insurance as provided in this section. (1983, c. 761, s. 105.)

§ 115D-31.2. Maintenance of plant.

Notwithstanding any provisions of law to the contrary, any community college that has an out-of-county student head count served on the main campus of the college in excess of fifty percent (50%) of the total student head count as defined by the State Board of Community Colleges, shall be provided funds for the purpose of "operations of plant". Each college that qualifies for these funds shall receive a pro rata amount of the funds that are appropriated for this purpose. (1993, c. 321, s. 110; 2001-424, s. 30.13.)

Editor's Note. — Session Laws 2005-276, s. 8.10(a)-(e), provides: "(a) Notwithstanding G.S. 143-18 or any other provision of law, a community college may retain and carry forward its General Fund current operations credit balance remaining at the end of the fiscal year if the county in which the main campus of the community college is located:

"(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;

"(2) Had an unemployment rate greater than or equal to seven percent (7%) in calendar year 2004; and

"(3) Is designated as a Low-Wealth County under Section 7.6 of this act, whose wealth as calculated by the Low-Wealth Formula is eighty percent (80%) or less of the State Average.

"(b) Community colleges that qualify for a carryforward under subsection (a) of this section that do not receive maintenance of plant funds pursuant to G.S. 115D-31.2 may use up to fifty thousand dollars ($50,000) from the carryforward to supplement local funding for maintenance of plant. Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended.

"(c) Colleges who serve counties that meet the criteria outlined in subsection (a) of this section, but whose main campuses are not located in such counties, may carry forward the percentage of the funds remaining at the end of the fiscal year equal to the percentage of total full-time equivalent students served in those counties that meet the criteria, as determined by the North Carolina Community Colleges System Office.

"(d) Allowable carryforwards under this section shall be calculated prior to the calculation of Performance Funding as described in G.S. 115D-31.3.

"(e) This section becomes effective June 30, 2005, but expires June 30, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 115D-31.3. Institutional performance accountability.

(a) Creation of Accountability Measures and Performance Standards. — The State Board of Community Colleges shall create new accountability measures and performance standards for the Community College System. Survey results shall be used as a performance standard only if the survey is statistically valid. The State Board of Community Colleges shall review annually the accountability measures and performance standards to ensure that they are appropriate for use in recognition of successful institutional performance.

(b) through (d) Repealed by Session Laws 2000-67, s. 9.7, effective July 1, 2000.

(e) Mandatory Performance Standards. — The State Board of Community Colleges shall evaluate each college on the following eight performance standards:

(1) Progress of basic skills students,
(2) Passing rate for licensure and certification examinations,
(3) Performance of students who transfer to a four-year institution,
(4) Passing rates in developmental courses,
(5) Success rates of developmental students in subsequent college-level courses,
(6) The level of satisfaction of students who complete programs and those who do not complete programs,
(7) Curriculum student retention and graduation, and
(8) Client satisfaction with customized training.

The State Board may also evaluate each college on additional performance standards.

(f) Publication of Performance Ratings. — Each college shall publish its performance on the eight standards set out in subsection (e) of this section (i) annually in its electronic catalog or on the Internet and (ii) in its printed catalog each time the catalog is reprinted.

The Community Colleges System Office shall publish the performance of all colleges on all eight standards.

(g) Recognition for Successful Institutional Performance. — For the purpose of recognition for successful institutional performance, the State Board of Community Colleges shall evaluate each college on the eight performance standards. For each of these eight performance standards on which a college performs successfully, the college may retain and carry forward into the next fiscal year one-fourth of one percent (¼ of 1%) of its final fiscal year General Fund appropriations. If a college demonstrates significant improvement on a standard that has been in use for three years or less, the college may also carry forward one-fourth of one percent (¼ of 1%) of its final fiscal year General Fund appropriations for that standard.

(h) Recognition for Exceptional Institutional Performance. — Funds not allocated to colleges in accordance with subsection (g) of this section shall be used to reward exceptional institutional performance. After all State aid budget obligations have been met, the State Board of Community Colleges shall distribute the remainder of these funds equally to colleges that perform successfully on eight performance standards and meet the following criteria:

(1) The passing rate on all reported licensure and certification examinations for which the community colleges have authority over who sits for the examination must meet or exceed seventy percent (70%) for first-time test takers; and
(2) The percentage of college transfer students with a grade point average of at least 2.0 after two semesters at a four-year institution must equal or exceed the performance of students who began college at that four-year institution.

The State Board may withhold the portion of funds for which a college may qualify as an exceptional institution while the college is under investigation by a State or federal agency or if its performance does not meet the standards established by the Southern Association of Colleges and Schools, the State Auditor's Office, or the State Board of Community Colleges. The State Board may release the funds at such time as the investigations are complete and the issues are resolved.

(i) Permissible Uses of Funds. — Funds retained by colleges or distributed to colleges pursuant to this section shall be used for the purchase of equipment, initial program start-up costs including faculty salaries for the first year of a program, and one-time faculty and staff bonuses. These funds shall not be used for continuing salary increases or for other obligations beyond the fiscal year into which they were carried forward. These funds shall be encumbered within 12 months of the fiscal year into which they were carried forward.

(j) Use of funds in low-wealth counties. — Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located meets all of the following:

(1) Is designated as a Tier 1 county in accordance with G.S. 143B-437.08.
(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year.
(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended. (1999-237, s. 9.2(a); 2000-67, s. 9.7; 2001-186, s. 1; 2006-66, s. 8.9(a); 2007-230, s. 1; 2007-484, s. 29.5(a); 2007-527, s. 19.)

Editor's Note. — Session Laws 1999-237, s. 9.2(c), made this section effective July 1, 1999.

Session Laws 1999-237, s. 9.2(b), provides the State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division prior to March 1, on an annual basis, on the implementation of this provision.

Session Laws 1999-237, s. 9.2(c), provides in part that the State Board of Community Colleges shall authorize institutions meeting the new performance standards to carry forward funds from the 2000-2001 fiscal year to the 2001-2002 fiscal year and at the end of subsequent fiscal years.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.4, contains a severability clause.

Session Laws 2005-276, s. 8.10(a)-(e), provides: "(a) Notwithstanding G.S. 143-18 or any other provision of law, a community college may retain and carry forward its General Fund current operations credit balance remaining at the end of the fiscal year if the county in which the main campus of the community college is located:

"(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;

"(2) Had an unemployment rate greater than or equal to seven percent (7%) in calendar year 2004; and

"(3) Is designated as a Low-Wealth County under Section 7.6 of this act, whose wealth as calculated by the Low-Wealth Formula is eighty percent (80%) or less of the State Average.

"(b) Community colleges that qualify for a carryforward under subsection (a) of this section that do not receive maintenance of plant funds pursuant to G.S. 115D-31.2 may use up to fifty thousand dollars ($50,000) from the carryforward to supplement local funding for maintenance of plant. Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended.

"(c) Colleges who serve counties that meet the criteria outlined in subsection (a) of this section, but whose main campuses are not located in such counties, may carry forward the percentage of the funds remaining at the end of the fiscal year equal to the percentage of total full-time equivalent students served in those counties that meet the criteria, as determined by the North Carolina Community Colleges System Office.

"(d) Allowable carryforwards under this section shall be calculated prior to the calculation of Performance Funding as described in G.S. 115D-31.3.

"(e) This section becomes effective June 30, 2005, but expires June 30, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-484, s. 29.5, effective January 1, 2008, in subdivision (j)(1), deleted "or Tier 2" following "Tier 1" and substituted "G.S. 143B-437.08" for "G.S. 105-129.3."

§ 115D-32. Local financial support of institutions.

(a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115D-33 or 115D-34, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

(1) Plant Fund: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase or rental of all equipment necessary for the maintenance of buildings and grounds and operation of plants; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:
  a. Plant operation and maintenance:
    1. Salaries of janitors, maids, watchmen, maintenance and repair employees.
    2. Cost of fuel, water, power, and telephone services.
    3. Cost of janitorial supplies and materials.
    4. Cost of operation of motor vehicles.
    5. Cost of maintenance and repairs of buildings and grounds.
    6. Maintenance and replacement of furniture and equipment provided from local funds.
    7. Maintenance of plant heating, electrical, and plumbing equipment.
    8. Maintenance of all other equipment, including motor vehicles, provided by local funds.
    9. Rental of land and buildings.
    10. Any other expenses necessary for plant operation and maintenance.
  b. Support services:
    1. Cost of insurance for buildings, contents, motor vehicles, workers' compensation for institutional employees paid from local funds, and other necessary insurance.
    2. Any tort claims awarded against the institution due to the negligence of the institutional employees.
    3. Cost of bonding institutional employees for the protection of local funds and property.
    4. Cost of elections held in accordance with G.S. 115D-33 and 115D-35.
    5. Legal fees incurred in connection with local administration and operation of the institution.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115D-33(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a budget is submitted in accordance with G.S. 115D-54.

(c) The board of trustees of each institution may apply institutional funds provided in accordance with G.S. 115D-54(b)(3) for such purposes as may be determined by the board of trustees of the institution.

(d) The counties that agree to have satellite campuses of community colleges located in them accept the maintenance and utility costs of these satellite campuses. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 3; 1985, c. 757, s. 148(a); 1987, c. 564, s. 11; 1995, c. 509, s. 64; 1999-84, s. 5.)

Cross References. — As to budgeting, accounting and fiscal management, see G.S. 115D-54 to 115D-58.12.

Editor's Note. — Session Laws 2008-107, s. 8.10, provides: "Notwithstanding G.S. 115D-32 or any other provision of law, a community college may use up to two percent (2%) of the noninstructional State funds allocated to it in the institutional support allotment for the 2008-2009 fiscal year for campus security. This may include the hiring of personnel, contracted professional services, surveillance cameras, call boxes, alert systems, and other equipment-related expenditures.

"These funds shall be used to supplement and shall not be used to supplant existing local funding for campus security."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Adequacy of Funds Provided to Community College. — The adequacy of the funds provided to a community college pursuant to statute should be determined by the degree to which these funds meet the financial needs of that college for the budget items identified in the statute, which is necessarily a fact-intensive inquiry. See opinion of Attorney General to Dr. Ted H. Gasper, Jr., President, Halifax Community College, 2000 N.C. AG LEXIS 26 (6/14/2000).

§ 115D-33. Providing local public funds for institutions established under this Chapter; elections.

(a) Except as provided in G.S. 115D-34, the tax-levying authority of an institution may provide for local financial support of the institution as follows:

(1) By appropriations from nontax revenues in a manner consistent with the Local Government Budget and Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, or

(2) By a special annual levy of taxes within a maximum annual rate which maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of establishing or increasing the maximum annual rate in an election held for such purpose or both, and

(3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject

to the Local Government Finance Act (Chapter 159) and shall be issued pursuant to Subchapter IV, Long-Term Financing, (§ 159-43 et seq.) of Chapter 159 of the General Statutes.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax-levying authority) to appropriate funds from nontax revenues or a special annual levy of taxes or both, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a special annual levy of taxes not to exceed an annual rate of ________ cents per one hundred dollars ($100.00) of assessed property valuation, or both, for the financial support of ______ (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds, to levy special taxes and the question of approving an issue of bonds, when approval of each or both shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under Article 4, Chapter 159, of the General Statutes, the Local Government Bond Act, and may be held at any time fixed by the tax-levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Community Colleges shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before favorably recommending approval of the establishment of an institution.

(f) Notwithstanding any present provisions of this Chapter, the tax-levying authority of each institution may at its discretion and upon its own motion provide by appropriations of nontax revenue, tax revenue, or both, funds for the support of institutional purposes as set forth in G.S. 115D-32; but nothing herein shall be construed to authorize the issuance of bonds without a vote of the people. (1963, c. 448, s. 23; 1971, c. 402; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 717, s. 27.3.)

§ 115D-34. Providing local public funds for institutions previously established.

(a) For counties in which, immediately prior to the enactment of this Chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the provisions of this Chapter, the following provisions shall apply in providing local financial support for each such institution:

(1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the institution as a community college as provided in G.S. 115D-32, to the maximum rate last approved by the voters of the county in accordance with the above Article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues.

The question of increasing the maximum annual rate of a special tax may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.

(2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated or authorized to operate as part of the public school system and which hereafter shall be operated as a community college as defined in this Chapter may levy special taxes annually at a rate sufficient to provide funds for the financial support of the institute or college as required by G.S. 115D-32(a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the institute or college financed from State funds.

(b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.

(c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this Chapter and which remain to the credit of the institution upon its becoming subject to these provisions shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1; 1979, c. 462, s. 2; 1987, c. 564, ss. 20, 34.)

§ 115D-35. Requests for elections to provide funds for institutions.

(a) Formal requests for elections on the question of authority to appropriate nontax revenues or levy special taxes, or both, and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

(1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.

(2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax-levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of the tax-levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions of this Article. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-36. Elections on question of the addition of a college transfer program at an institution and issuance of bonds therefor.

Whenever the board of trustees of an institution requests the State Board of Community Colleges to authorize the addition of a college transfer program, the Board shall require, as a prerequisite to such addition:

(1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the institution after the addition of the college transfer program, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.

(2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the institution after the addition of the college transfer program, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35. (1968, c. 443, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1987, c. 564, s. 5.)

§ 115D-37. Payment of expenses of special elections under Chapter.

The cost of special elections held under the authority of this Chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-38. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.

Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this Chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-39. Student tuition and fees.

(a) The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2). Also, a nonresident of the United States who has resided in North Carolina for a 12-month qualifying period and has filed an immigrant petition with the United States Immigration and Naturalization Service shall be considered a State resident for community college tuition purposes.

(b) In addition, any person lawfully admitted to the United States who satisfied the qualifications for assignment to a public school set out under G.S. 115C-366 and graduated from the public school to which the student was assigned shall also be eligible for the State resident community college tuition rate. This subsection does not make a person a resident of North Carolina for any other purpose.

(c) In addition, a person sponsored under this subsection who is lawfully admitted to the United States is eligible for the State resident community college tuition rate. For purposes of this subsection, a North Carolina nonprofit entity is a charitable or religious corporation as defined in G.S. 55A-1-40 that is incorporated in North Carolina and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, or a civic league incorporated in North Carolina under Chapter 55A of the General Statutes that is exempt from taxation under section 501(c)(4) of the Internal Revenue Code. A nonresident of the United States is sponsored by a North Carolina nonprofit entity if the student resides in North Carolina while attending the community college and the North Carolina nonprofit entity provides a signed affidavit to the community college verifying that the entity accepts financial responsibility for the student's tuition and any other required educational fees. Any North Carolina nonprofit entity that sponsors a nonresident of the United States under this subsection may sponsor no more than five nonresident students annually under this subsection. This subsection does not make a person a resident of North Carolina for any other purpose. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 58; 1989, c. 752, s. 85; 1991 (Reg. Sess., 1992), c. 1044, s. 25(a); 1993, c. 561, s. 50(a); 1996, 2nd Ex. Sess., c. 18, s. 17.1(a); 2000-67, s. 9.8; 2003-284, ss. 8.16(b), 8.16A(a).)

Cross References. — As to contracts by minors borrowing for higher education at junior colleges and industrial education centers, see G.S. 116-174.1.

Military Personnel Called to Active Duty, etc. During 2001-2002 Academic Year. — Session Laws 2001-508, s. 7(a)-(c), provides: "Section 7(a). Community College Refunds. — Upon request of the student, each community college shall:

"(1) Grant a full refund of curriculum tuition and fees to military reserve and national guard personnel called to active duty or active personnel who have received temporary or permanent reassignments as a result of military operations that make it impossible for them to complete their course requirements; and

"(2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance-learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

"Section 7(b). Upon request of the student, each community college shall:

"(1) Grant a full refund of extension registration fees to military reserve and national guard personnel called to active duty or active personnel who have received temporary or permanent reassignments as a result of military operations that make it impossible for them to complete their course requirements; and

"(2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance-learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

"Section 7(c). This section [s. 7 of Session Laws 2001-508] applies to the 2001-2002 academic year only."

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1044, which amended this section by adding the final sentence, in s. 25(b), provides that the amendment does not apply to migrant workers.

§ 115D-39.1. Tuition surcharge.

(a) Notwithstanding the provisions of G.S. 115D-39.1(a), a community college may, with the approval of the State Board of Community Colleges:

(1) Implement a tuition surcharge of up to thirty-three and one-third percent (33 ⅓%) of the statewide tuition rate to fund a new instructional program that is necessary to attract industry to the area, and

(2) Use the proceeds of an endowed scholarship, consistent with the terms of the endowment, to offset the cost of the tuition charge.

(b) All students enrolled in the new program, except for students for whom tuition and registration are waived by law or regulation, shall be charged the tuition surcharge. The funds collected from the endowment shall be deposited into an unrestricted institutional fund account at the community college.

(c) This section applies only to an endowed scholarship in excess of five million dollars ($5,000,000).

(d) The State Board shall adopt rules to implement this section. (2007-367, s. 1.)

Editor's Note. — Session Laws 2007-367, s. 2, made this section effective July 1, 2007.

§ 115D-40: Repealed by Session Laws 1999-237, s. 9.4(c), effective July 1, 1999.

§ 115D-40.1. Financial Assistance for Community College Students.

(a) Need-Based Assistance Program. — It is the intent of the General Assembly that the Community College System make these financial aid funds available to the neediest students who are not eligible for other financial aid programs that fully cover the required educational expenses of these students. The State Board may use some of these funds as short-term loans to students who anticipate receiving the federal HOPE or Lifetime Learning Tax Credits.

(b) Targeted Assistance. — Notwithstanding subsection (a) of this section, the State Board may allocate no more than ten percent (10%) of the funds appropriated for Financial Assistance for Community College Students to:

(1) Students who do not qualify for need-based assistance but who enroll in low-enrollment programs that prepare students for high-demand occupations, and

(2) Students with disabilities who have been referred by the Division of Vocational Rehabilitation and are enrolled in a community college.

(c) Administration of Program. — The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance.

The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students including, but not limited to, Pell Grants and HOPE and Lifetime Learning Tax Credits and to actively encourage students to utilize these federal programs and funds. The interest earned on the funds provided in this section may be used to support the costs of administering the Community College Grant Program. (1999-237, s. 9.4(a), (b); 2001-229, ss. 1, 2; 2003-52, s. 1; 2003-385, s. 1; 2009-451, s. 8.4.)

Editor's Note. — Session Laws 2001-229, s. 1, effective July 1, 2001, codified Session Laws 1999-237, s. 9.4(a) and (b) as G.S. 115D-40.1(a) and G.S. 115D-40.1(b), respectively. The effective date of this section, as initially enacted, was July 1, 1999.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 8.4, effective July 1, 2009, added the last sentence of the second paragraph of subsection (c).

§ 115D-41. Restrictions on contracts with local school administrative units; use of community college facilities by public school students pursuant to cooperative programs.

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs. In no event shall a community college contract with a local school administrative unit to provide high school level courses.

(b) Existing community college facilities that comply with the North Carolina State Building Code and applicable local ordinances for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new community college facilities that comply with the North Carolina State Building Code and applicable local ordinances for community college facilities also may be used without modification for these students.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered "Business — Group B" in the same manner as other community college uses. (1991 (Reg. Sess., 1992), c. 900, s. 82(a); 2006-66, s. 8.11(a); 2006-221, s. 5; 2009-206, s. 1.)

Editor's Note. — At the direction of the Revisor of Statutes, Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 82(a) has been codified as this section.

Session Laws 2009-206, s. 2, provides: "Notwithstanding any established expiration date for the application of the 2006 North Carolina State Building Code occurring prior to August 1, 2009, a county may obtain a permit until August 1, 2009 under the 2006 North Carolina State Building Codes (Building, Energy Conservation, Fire, Fuel Gas, Mechanical, and Plumbing) for the construction of facilities to be used for administrative purposes."

Effect of Amendments. — Session Laws 2009-206, s. 1, effective June 26, 2009, rewrote subsection (b).

§ 115D-42. North Carolina Community Colleges Instructional Trust Fund.

(a) There is established the North Carolina Community Colleges Instructional Trust Fund. The purpose of this Trust Fund is to supplement the funds raised by community college foundations to enhance the academic missions of community colleges.

(b) The State Board of Community Colleges is authorized to allocate funds from the Instructional Trust Fund to the community colleges and to adopt rules to implement the provisions of this section.

(c) State funds from the Trust Fund and matching funds raised by foundations shall be used by the board of trustees of a community college only to enhance the academic mission of the college. State funds shall be used only for scholarships or financial aid for needy students.

Expenditures of the matching funds raised by foundations shall directly relate to education and shall be used only for:

(1) Resource center materials;

(2) Professional development of instructional faculty and staff in cases in which (i) professional development will improve the quality of performance provided by the employee and (ii) the employee makes a commitment to remain at the college for a prescribed period of time;

(3) Professional development of instructional faculty and staff in cases in which professional development is necessary to enhance the employee's ability to meet newly mandated instructional or performance requirements; and

(4) Other purposes authorized by the State Board of Community Colleges that are consistent with the college's mission.

(d) Every two dollars ($2.00) raised by the community college foundations for the Trust Fund during the 2003- 2004 fiscal year shall be matched with one dollar ($1.00) of State funds. The maximum matching contribution from the State shall not exceed twenty-five thousand dollars ($25,000) for each of the 58 community colleges. These funds shall be reserved for each community college and held in escrow in the Trust Fund. A community college foundation may apply for matching funds after it raises twenty-five thousand dollars ($25,000). The chairperson of each community college foundation shall certify to the North Carolina Community College System Office that (i) new funds have been raised by the community college foundation to match the amount of funds held in escrow in the Trust Fund, (ii) the amount raised by the community college foundation has not been used previously for matching purposes, (iii) the amount raised by the college shall be used only as provided in subsection (c) of this section, and (iv) matching State funds shall be used only for scholarships or financial aid for needy students.

(e) The State Board of Community Colleges may request an audit of the State funds expended under this section from any community college foundation. (2003-284, s. 8.14(a).)

§§ 115D-43, 115D-44: Reserved for future codification purposes.

ARTICLE 4.

Budgeting, Accounting, and Fiscal Management.

§§ 115D-45 through 115D-53: Recodified as G.S. 115D-54 to 115D-58.12.

Editor's Note. — This Article was rewritten by Session Laws 1981, c. 157, s. 1, and has been recodified as Article 4A, G.S. 115D-54 to 115D-58.12, of this Chapter.

ARTICLE 4A.

Budgeting, Accounting, and Fiscal Management.

§ 115D-54. Preparation and submission of institutional budget.

(a) By a date determined by the State Board, trustees of each institution shall prepare for submission a budget request as provided in G.S. 115D-54(b) on forms provided by the State Board of Community Colleges. The budget shall be based on estimates of available funds if provided by the funding authorities or as estimated by the institution. The State Current Fund shall be based on available funds. All other funds shall be based on needs as determined by the board of trustees and shall include the following:

(1) State Current Fund.
(2) County Current Fund.
(3) Institutional Fund.
(4) Plant Fund.

(b) The budget shall be prepared and submitted for approval according to the following procedures:

(1) State Current Fund Budget. — The budget request shall contain the items of current operating expenses as provided in G.S. 115D-31 for which State funds are requested. The approving authority for the State current fund budget request shall be the board of trustees and the State Board of Community Colleges.

(2) County Current Fund Budget. — The budget request shall contain the items of current operating expenses, as provided in G.S. 115D-32, for which county funds are requested. The approving authority for the county current fund budget request shall be the board of trustees and the local tax-levying authority. The State Board of Community Colleges shall have approving authority pursuant to G.S. 115D-33 with respect to required local funding.

(3) Institutional Fund Budget. — The budget request shall contain the items of current operating expenses, loan funds, scholarship funds, auxiliary enterprises, State, private, and federal grants and contracts and endowment funds for which institutional funds are requested. The approving authority for the institutional fund budget request shall be the board of trustees of the institution.

(4) Plant Fund Budget. — The budget request shall contain the items of capital outlay, as provided in G.S. 115D-31 and 115D-32, for which funds are requested, from whatever source. The board of trustees shall submit the budget to the local tax-levying authority. The local tax-levying authority shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. After ap-

proval by the local tax-levying authority, the board of trustees shall submit the budget to the State Board of Community Colleges on a date designated by the State Board. The State Board may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds. Plant funds provided for construction and major renovations shall be permanent appropriations until the conclusion of the project for which appropriated.

(c) No public funds shall be provided an institution, either by the tax-levying authority or by the State Board of Community Colleges, except in accordance with the budget provisions of this Article.

(d) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county finance officer or county finance officers of the administrative areas, and the board of trustees of the institution shall have no duty or responsibility in this connection.

(e) "Trust and Agency Fund" means funds held by an institution as custodian or fiscal agent for others such as student organizations, individual students, or faculty members. Trust and agency funds need not be budgeted. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1; 2001-112, s. 1; 2007-484, s. 29(c).)

Editor's Note. — This Article is Article 4 of this Chapter as rewritten by Session Laws 1981, c. 157, s. 1, and recodified. Where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections of the new Article.

§ 115D-55. Budget management.

(a) Approval of Budget by Local Tax-Levying Authority. — By a date fixed by the local tax-levying authority, the budget shall be submitted to the local tax-levying authority for approval of that portion within its authority as stated in G.S. 115D-54(b). On or before July 1, or such later date as may be agreeable to the board of trustees, but in no instance later than September 1, the local tax-levying authority shall determine the amount of county revenue to be appropriated to an institution for the budget year. The local tax-levying authority may allocate part or all of an appropriation by purpose, function, or project as defined in the budget manual as adopted by the State Board of Community Colleges.

The local tax-levying authority shall have full authority to call for all books, records, audit reports, and other information bearing on the financial operation of the institution except records dealing with specific persons for which the persons' rights of privacy are protected by either federal or State law.

Nothing in this Article shall be construed to place a duty on the local tax-levying authority to fund a deficit incurred by an institution through failure of the institution to comply with the provisions of this Article or rules and regulations issued pursuant hereto.

(b) Approval of Budget by State Board of Community Colleges. — After notification by the local tax-levying authority of the amount appropriated, the budget shall be submitted to the State Board of Community Colleges on a date designated by the State Board of Community Colleges for approval of that portion within its authority as stated in G.S. 115D-54(b). The State Board of Community Colleges shall approve the budget for each institution in such amount as the State Board decides is available and necessary for the operation of the institution.

The State Board of Community Colleges shall have authority to call for all books, records, audit reports and other information bearing on the financial operation of the institution except records dealing with specific persons for which the persons' rights of privacy are protected by either federal or State law.

Nothing in this Article shall be construed to place a duty on the State Board of Community Colleges to fund a deficit incurred by an institution through failure of the institution to comply with the provisions of this Article or rules and regulations issued pursuant hereto. (1981, c. 157, s. 1; 2001-112, s. 2; 2007-484, s. 29(d).)

§ 115D-56. Final adoption of budget.

Upon notification of approval by the State Board of Community Colleges, the board of trustees shall adopt a budget resolution as defined in the budget manual as adopted by the State Board of Community Colleges, which shall comply with the resolution of the State Board and the appropriations of the tax-levying authorities and all other funding agencies. (1981, c. 157, s. 1.)

§ 115D-57. Interim budget.

In case the adoption of the budget resolution is delayed until after July 1, the board of trustees shall authorize the president, through interim provisions, to pay salaries and the other ordinary expenses of the institution for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim provisions so made shall be charged to the proper allocations in the budget resolution. (1981, c. 157, s. 1.)

§ 115D-58. Amendments to the budget; budget transfers.

(a) The State Board of Community Colleges shall adopt rules and regulations governing the amendment of the budget for an institution. The board of trustees may amend the budget at any time after its adoption pursuant to the rules and regulations of the State Board.

(b) If the local tax-levying authority allocates part or all of an appropriation pursuant to G.S. 115D-55, the board of trustees must obtain approval of the local tax-levying authority for an amendment to the budget which increases or decreases the amount of that appropriation allocated to a purpose, function, or project by twenty-five percent (25%) or more from the amount contained in the budget ordinance adopted by the local tax-levying authority or such lesser percentage as specified by the local tax-levying authority in the original budget ordinance, so long as such percentage is not less than ten percent (10%).

(c) The board of trustees may, by appropriate resolution, authorize the president to transfer moneys from one appropriation to another within the same fund, subject to any limitations established by regulations adopted pursuant to this section, and subject to any limitations and procedures prescribed by the board of trustees or State for federal laws or regulations. Any such transfer shall be reported to the board of trustees at its next regular meeting and entered into its minutes. (1981, c. 157, s. 1.)

§ 115D-58.1. Federal contracts and grants.

The board of trustees of any institution may apply for and accept grants from the federal government or any agency thereof, in order to carry out the institution's mission. In exercising this authority, the board of trustees may enter into and carry out contracts with the federal government or any agency thereof, may agree to and comply with any lawful and reasonable condition attached to such a grant including, in the case of a grant from the Economic Development Administration, the granting of a security interest to the Economic Development Administration in any real property or equipment purchased with the grant, limiting the sale or use of the real property or equipment as prescribed by regulations of the Economic Development Administration, and may make expenditures from any funds so granted. The State Board of Community Colleges shall adopt rules and regulations governing the application for and the acceptance of grants under this section. (1981, c. 157, s. 1; 2001-211, s. 1.)

§ 115D-58.2. Allocation of revenue to the institution by the local tax-levying authority.

(a) The local tax-levying authority of each institution shall provide, as needed, funds to meet the monthly expenditures, including salaries and other necessary operating expenses, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. Upon the basis of the approved budget, the county finance officer shall make available to the institution the moneys requested by the board of trustees no later than the fifteenth day of the month for which funds are requested.

(b) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings, or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the administrative area of the institution receiving the insurance payments. If such payments, which are not used to repair or replace institutional buildings, exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and shall be applied to the next succeeding plant fund budget until the excess funds shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Community Colleges in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. Until these funds shall have been expended, they shall either be used for repair or replacement of lost contents or be credited to the institution for succeeding plant and current expense budgets as appropriate. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.3. Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of the institution shall be made in monthly installments, and additionally as necessary, at such time and in such manner as may be convenient for the operation of the community college system. Before an installment is credited, the institution shall certify to the Community Colleges System Office, the expenditures to be made by the institution from the State Current Fund during the month.

The Community Colleges System Office shall determine whether the moneys requisitioned are due the institution, and upon determining the amount due, shall cause the requisite amount to be credited to the institution. Upon receiving notice from the Community Colleges System Office that the amount has been placed to the credit of the institution, the institution may issue State warrants up to the amount so certified. Money in the State Current Fund and other moneys made available by the State Board of Community Colleges shall be released only on warrants drawn on the State Treasurer, signed by two officials of the institution designated for this purpose by the board of trustees. (1963, c. 448, s. 23; 1965, c. 448, s. 2; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1; 1999-84, s. 13.)

§ 115D-58.4. Provisions for disbursement of local money.

All local public funds received by or credited to an institution shall be disbursed on checks signed by the two officials of the institution who shall have been designated by the board of trustees. The officials so designated shall countersign a check only if the funds required by such check are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each check shall be accompanied by an invoice, statement, voucher, or other basic document which indicates, to the satisfaction of the signing officials, that the issuance of such check is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.5. Accounting system.

(a) Each institution shall establish and maintain an accounting system consistent with procedures as prescribed by the Community Colleges System Office and the State Controller, which shows its assets, liabilities, equities, revenues, and expenditures.

(b) Each institution shall be governed in its purchasing of all supplies, equipment, and materials by contracts made by or with the approval of the Purchase and Contract Division of the Department of Administration except as provided in G.S. 115D-58.14. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment thereof. In order to protect the State purchase contracts, it is the duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. Equipment shall be titled to the State Board of Community Colleges if derived from State or federal funds.

(c) The operations of each institution shall be subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(d) Repealed by Session Laws 1983, c. 913, s. 18. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1; 1983, c. 913, s. 18; 1998-68, s. 1; 1999-84, s. 14; 2000-67, s. 7(c).)

§ 115D-58.6. Investment of idle cash.

(a) The institution may deposit at interest or invest all or part of the cash balance of any fund in an official depository of the institution. The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank, savings and loan association or trust company in this State in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. In addition, moneys may be deposited in the form of certificates of deposit as provided for a local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b).

(c) Moneys may be invested in the form of investments pursuant to G.S. 159-30(c) to county governments and no others. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.

(d) Investment securities may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the official designated by the board of trustees. (1981, c. 157, s. 1; c. 612, s. 1; 2005-394, s. 3.)

§ 115D-58.7. Selection of depository; deposits to be secured.

(a) Each board of trustees shall designate as the official depositories of the institution one or more banks, savings and loan associations or trust companies in this State. It shall be unlawful for any money belonging to an institution, other than moneys required to be deposited with the State Treasurer, to be deposited in any place, bank, savings and loan associations, or trust company other than an official depository except as permitted in G.S. 115D-58.6(b). However, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts where permitted by applicable federal or State regulations.

(b) Money deposited in an official depository or deposited at interest pursuant to G.S. 115D-58.6(b) shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. (1981, c. 157, s. 1; c. 612, s. 1.)

§ 115D-58.8. Facsimile signatures.

The board of trustees may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts. The board shall charge some bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. Rules and regulations governing the use and control of the facsimile signature shall be adopted by the State Board of Community Colleges. (1981, c. 157, s. 1.)

§ 115D-58.9. Daily deposits.

All moneys regardless of source or purpose collected or received by an officer, employee, or agent of an institution shall be deposited intact in accordance with this section. Each officer, employee and agent of an institution whose duty it is to collect or receive any moneys shall deposit his collections and receipts daily. If the board of trustees gives its approval, deposits may be required only when the moneys on hand amount to as much as two hundred fifty dollars ($250.00), but in any event, a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Tuition and all revenues declared by law to be State moneys or otherwise required to be deposited with the State Treasurer shall be deposited pursuant to the rules of the State Treasurer pursuant to G.S. 147-77. (1981, c. 157, s. 1.)

§ 115D-58.10. Surety bonds.

The State Board of Community Colleges shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the State Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business with the State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax-levying authority of each institution shall provide the funds necessary for the payment of the premiums of such bonds. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.11. Fire and casualty insurance on institutional buildings and contents.

(a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall:

(1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage.

(2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax-levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in G.S. 115D-58.11(a).

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of Article 16, Chapter 115, of the General Statutes, "State Insurance of Public School Property." (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1.)

Editor's Note. — Article 16 of Chapter 115, referred to in this section, was repealed by Session Laws 1981, c. 423. See now Article 38 of Chapter 115C.

§ 115D-58.12. Liability insurance; tort actions against boards of trustees.

(a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State or from other qualified companies as determined by the Department of Insurance. Each contract of insurance must, by its terms, adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury, and the jury shall be absent during any motions, arguments, testimony, or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this Chapter is authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1; 1985, c. 489.)

Legal Periodicals. — For article, "Statutory Waiver of Municipal Immunity Upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

§ 115D-58.13. Vending facilities.

Moneys received by an institution on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 170.)

§ 115D-58.14. Purchasing flexibility.

(a) Community colleges may purchase supplies, equipment, and materials from noncertified sources that are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;

(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1; and

(3) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts.

(a1) Notwithstanding the provisions of this section, a community college may purchase, in any lawful manner, an item that is neither available under

State term contracts nor substantially similar to an item available under State term contracts.

(b) The State Board of Community Colleges and the Department of Administration shall jointly adopt policies and procedures for monitoring the implementation of this section, including without limitation (i) definitions of substantial similarity, (ii) the content and frequency of reports and audits of such purchases, and (iii) a process for identifying any term contract existing as of October 1, 2009, with respect to which the exercise of purchasing flexibility could constitute a breach of that contract.

In the formation of each new term contract entered into after October 1, 2009, the Department of Administration shall, in its discretion, either provide in the contract for the purchasing flexibility set out in this section or make the term contract inapplicable to community colleges.

(c) The State Board of Community Colleges, in consultation with the Department of Administration, shall review the purchasing process for community colleges and may increase or decrease the purchasing/delegation benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports. The State Board may, in its discretion, reduce a community college's purchasing/delegation benchmark at anytime. The State Board shall not increase a community college's purchasing/delegation benchmark by more than fifteen percent (15%) in any calendar year without the concurrence of the Department of Administration within 60 days of submission. The maximum purchasing/delegation benchmark for a community college shall be one hundred thousand dollars ($100,000). (1998-68, s. 2; 2005-103, s. 5; 2009-132, s. 1.)

Effect of Amendments. — Session Laws 2009-132, s. 1, effective October 1, 2009, in subsection (a), in the introductory language, deleted "the same" preceding "supplies" and substituted "that are" for "as are," added sudivision (a)(3), and made related changes; added subsection (a1); rewrote subsection (b); and added subsection (c).

§ 115D-58.15. Lease purchase and installment purchase contracts for equipment.

(a) Authority. — The board of trustees of a community college may use lease purchase or installment purchase contracts to purchase or finance the purchase of equipment as provided in this section. A college shall not have more than five State-funded contracts in effect at any one time.

(b) Contract Approval. — Contracts for more than one hundred thousand dollars ($100,000) or for a term of more than three years shall be subject to review and approval as provided in this subsection. If the source of funds for payment of the obligation by the community college is intended to be local funds, the contract must be approved by resolution of the tax-levying authority, and the authority must acknowledge in writing its understanding that the community college may require appropriations from the tax-levying authority in order to meet the college's obligations under the contract. The tax-levying authority may in each fiscal year appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the contract. If the source of funds for payment of the obligation by the community college is intended to be State funds, the contract must be approved by resolution of the State Board of Community Colleges. The State Board may in each fiscal year allocate sufficient funds to meet the amounts to be paid during the fiscal year under the contract.

(c) Local Government Commission. — A contract that is subject to approval by the tax-levying authority also shall be subject to approval by the Local Government Commission as provided in Article 8 of Chapter 159 of the General Statutes if the contract:

(1) Extends for five or more years from the date of the contract;
(2) Obligates the board of trustees to pay sums of money to another, regardless of whether the payee is a party to the contract; and
(3) Obligates the board of trustees to pay five hundred thousand dollars ($500,000) or more over the full term of the contract.

(d) Application of Section. — When determining whether a contract is subject to approval under this section the total cost of exercising an option to upgrade property shall be taken into consideration. The term of a contract shall include periods that may be added to the original term through the exercise of an option to renew or extend.

(e) Nonsubstitution Clause. — No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a board of trustees to:
(1) Continue to provide a service or activity; or
(2) Replace or provide a substitute for any property financed or purchased by the contract.

(f) Nonappropriations Clause. — No deficiency judgment may be rendered against any board of trustees, any tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation authorized by this section. The taxing power of a tax-levying authority and the State is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (1998-111, s. 2; 2007-484, s. 29(e).)

ARTICLE 5.

Special Provisions.

§ 115D-59. Multiple-county administrative areas.

Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Community Colleges as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this Chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Community Colleges shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Local Modification. — Anson and Union: 1999-60, s. 2; Mayland Community College: 1993 (Reg. Sess., 1994), c. 575, s. 1.

§ 115D-60. Special provisions for Central Piedmont Community College.

(a) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in G.S. 115D-32 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant to Article 3, Chapter 116, of the General Statutes of North

Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.

(b) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution the board of trustees may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402; 1979, c. 462, s. 2.)

§ 115D-61. Special provisions for Coastal Carolina Community College.

All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution under its present name. (1967, c. 279; 1979, c. 462, s. 2.)

§ 115D-62. Trustee Association Regions.

The State is divided into six Trustee Association Regions as follows:

Region 1: The counties of Buncombe, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Polk, Rutherford, Swain, and Transylvania.

Region 2: The counties of Alexander, Alleghany, Ashe, Avery, Burke, Cabarrus, Caldwell, Catawba, Iredell, Mitchell, Rowan, Surry, Watauga, Wilkes, Yadkin, and Yancey.

Region 3: The counties of Alamance, Davidson, Caswell, Davie, Durham, Forsyth, Franklin, Granville, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Vance, Warren, and Wake.

Region 4: The counties of Anson, Chatham, Cumberland, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Richmond, Robeson, Scotland, Stanly, and Union.

Region 5: The counties of Bladen, Brunswick, Carteret, Craven, Columbus, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, and Wayne.

Region 6: The counties of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Martin, Nash, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, Washington, and Wilson. (1979, c. 896, s. 9; 1993, c. 69, s. 1.)

§§ 115D-63 through 115D-67: Reserved for future codification purposes.

Article 5A.

North Carolina Center for Applied Textile Technology at Gaston College.

§ 115D-67.1. Purpose of the Center.

The purpose of the North Carolina Center for Applied Textile Technology is to develop a world-class workforce for the textile industry in North Carolina;

support the textile industry by identifying problems confronting the industry and assisting the industry in solving them; garner support from the textile industry for the work of the Center; and serve as a statewide center of excellence that serves all components of the textile industry. (2005-103, s. 3.)

Editor's Note. — Session Laws 2005-103, s. 1, provides: "The North Carolina Center for Applied Textile Technology is transferred from the Community Colleges System Office to Gaston College. The transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6(a)."

Session Laws 2005-103, s. 6, provides: "The Director of the North Carolina Center for Applied Textile Technology shall serve ex officio as a nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College."

§ 115D-67.2. Advisory Board.

(a) The Advisory Board to the North Carolina Center for Applied Textile Technology is hereby established. The purpose of the Advisory Board is to assist in the advancement and administration of the Applied Textile Technology Center.

(b) The Advisory Board shall consist of 14 members:

(1) The President of Gaston College, who shall serve ex officio;
(2) Four members appointed by the North Carolina Manufacturers Association, Inc.;
(3) Two members appointed by the board of the North Carolina Center for Applied Textile Technology Foundation;
(4) Two members appointed by the board of trustees of Gaston College;
(5) Three members appointed by the State Board of Community Colleges;
(6) One member appointed by the dean of the College of Textiles at North Carolina State University; and
(7) The Director of the Hosiery Technology Center at Catawba Valley Community College who shall serve ex officio as a nonvoting member.

The appointing entities shall attempt to appoint members who are distributed geographically throughout the State; members representing large and small companies; and members from each segment of the diverse textile industry including spun yarn manufacturing, filament yarn manufacturing, knitting, weaving, dyeing and finishing, apparel, nonwoven, technical/medical textiles, and fiber producers.

(c) In order for the terms of members to be staggered, one initial member appointed by the North Carolina Manufacturers Association, Inc., one member appointed by the North Carolina Center for Applied Textile Technology Foundation, one member appointed by the board of trustees of Gaston College, and two members appointed by the State Board of Community Colleges shall serve for two-year terms. The remainder of the initial appointees shall serve for four-year terms. Subsequent terms shall be for four years. Initial terms shall begin July 1, 2005.

Members may serve for no more than two consecutive four-year terms. Members appointed to an initial term of two years and members appointed to fill a vacancy may serve two consecutive four-year terms after the expiration of their term of less than four years.

All vacancies occurring on the board shall be filled for the remainder of the unexpired term by the appointing authority making the original appointment.

Members shall receive per diem, travel, and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) The Advisory Board is a public body as defined in G.S. 143-318.10(b) and is subject to all provisions of G.S. 143-318.9 through G.S. 143-318.18. (2005-103, s. 3.)

§ 115D-67.3. Director and other Center personnel.

The President of Gaston College shall appoint an individual to serve as the director of the Center from a list of two or more candidates recommended by the Advisory Board. If the President rejects the recommended candidates, the Advisory Board shall submit two or more additional candidates. The director, after consultation with the Advisory Board and subject to the approval of the President of Gaston College, shall select other staff members of the Center. The director and other staff members of the Center are employees of Gaston College and are subject to the personnel policies of Gaston College. (2005-103, s. 3.)

§ 115D-67.4. Fees collected by the Center; purchases using Center funds.

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes. (2005-103, s. 3.)

ARTICLE 6.

Textile Training School.

§§ 115D-68 through 115D-71: Repealed by Session Laws 2005-103, s. 2, effective July 1, 2005.

Editor's Note. — Session Laws 2005-103, s. 1, provides: "The North Carolina Center for Applied Textile Technology is transferred from the Community Colleges System Office to Gaston College. The transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6(a)."

Session Laws 2005-103, s. 6, provides: "The Director of the North Carolina Center for Applied Textile Technology shall serve ex officio as a nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College."

ARTICLE 6A.

Motorcycle Safety Instruction.

§ 115D-72. Motorcycle Safety Instruction Program.

(a) There is created a Motorcycle Safety Instruction Program for the purpose of establishing statewide motorcycle safety instruction to be delivered through the Community Colleges System Office. The Program may be administered by a motorcycle safety coordinator who shall be responsible for the planning, curriculum, and completion requirements of the Program. The State Board of Community Colleges may elect a motorcycle safety coordinator upon nomination of the President of the Community College System, and the compensation of the motorcycle safety coordinator shall be fixed by the State Board upon recommendation of the President of the Community College System pursuant to G.S. 115D-3. The State Board of Community Colleges may contract with an appropriate public or private agency or person to carry out the duties of the motorcycle safety coordinator.

(b) The Motorcycle Safety Instruction Program shall be implemented through the Community Colleges System Office at institutions which choose to provide the Program. The motorcycle safety coordinator shall select and facilitate the training and certification of instructors who will implement the Program. (1989, c. 755, s. 1; 1993, c. 320, s. 5; 1999-84, s. 15.)

§§ 115D-73 through 115D-76: Reserved for future codification purposes.

Article 7.

Miscellaneous Provisions.

§ 115D-77. Nondiscrimination policy.

It is the policy of the State Board of Community Colleges and of local boards of trustees of the State of North Carolina not to discriminate among students on the basis of race, gender, national origin, religion, age, or disability.

The State Board and each board of trustees shall give equal opportunity for employment and compensation of personnel at community colleges, without regard to race, religion, color, creed, national origin, sex, age, or disability, except where specific age, sex or physical or mental requirements constitute bona fide occupational qualifications. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1991, c. 84, s. 4; 1999-84, s. 6.)

§ 115D-78. Access to information and public records.

In accordance with Chapter 132 of the General Statutes, all rules, regulations and public records of the State Board of Community Colleges, the Community Colleges System Office, and local boards of trustees shall be available for examination and reproduction on payment of fees by any person. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1999-84, s. 16.)

§ 115D-79. Open meetings.

All official meetings of the State Board of Community Colleges and of local boards of trustees shall be open to the public in accordance with the provisions of G.S. 143-318.1 through 143-318.7. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Editor's Note. — Sections 143-318.1 through 143-318.7, referred to in this section, were repealed by Session Laws 1979, c. 655, s. 1. For present provisions relating to meetings of public bodies, see G.S. 143-318.9 through 143-318.18.

§ 115D-80. Administrative Procedure Act applies.

As an agency of the State, the State Board of Community Colleges is subject to the Administrative Procedure Act, Chapter 150B of the General Statutes. Local boards of trustees are exempt from Chapter 150B. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1987, c. 827, s. 17.)

§ 115D-81. Saving clauses.

(a) Continuation of Existing Law. — The provisions of this Chapter, insofar as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by the act enacting this

Chapter of any statute or part thereof shall not revive any statute or part thereof previously repealed or suspended. The provisions of this section shall not affect title to, or ownership of, any real or personal property vested before April 26, 1979. This Chapter shall not in any way affect or repeal any local acts in conflict with the terms of this Chapter.

(b) Existing Rights and Liabilities. — The provisions of this Chapter shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of statutes repealed by the act enacting this Chapter. (1979, c. 462, § 2.)

§§ 115D-82 through 115D-86: Reserved for future codification purposes.

ARTICLE 8.

Proprietary Schools.

Editor's Note. — This Article is former Article 40 of Chapter 115C, as transferred and recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

Session Laws 1987, c. 442, s. 3 provided: "Nothing in this act shall be construed to mean that proprietary schools as defined in Article 40 of Chapter 115C and transferred to Chapter 115D by this act shall become community colleges or technical institutes or part of the Community College System, except for licensing and supervision. Specific authorization by the General Assembly shall be required before any proprietary school shall become a community college or technical institute or part of the Community College System."

§ 115D-87. Definitions.

As used in this Article:

(1) "Correspondence school" means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the student and the school, usually through printed or typewritten matter sent by the school and written responses by the student.

(2) "Persons" means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.

(3) "Proprietary business school" or "business school" means an educational institution that (i) is privately owned and operated by an owner, partnership or corporation, and (ii) offers business and office related courses for which tuition is charged, in business or office related subjects or subjects of general education when they contribute value to the objective of the course of study. If a school offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision.

(4) "Proprietary trade school" or "trade school" means an educational institution that (i) is privately owned and operated by an owner, partnership or corporation, and (ii) offers classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, mechanical or industrial occupation or teaching any or several of the

subjects needed to train youths or adults in the skills, knowledge and subjects, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations. If a school offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision.

(5) "Proprietary technical school", "technical school", "proprietary technical institute", or "technical institute" means an educational institution that (i) is privately owned and operated by an owner, partnership or corporation, and (ii) offers classes conducted for the purpose of teaching, for profit or for a tuition charge, any technical occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge and subjects, related information, and job judgment, necessary for success in one or more technical or related occupations. If a school offers classes in more than one county, the school's operations in each such county shall constitute a separate school, as defined in this subdivision. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 1; 1993, c. 553, s. 32.2.)

Editor's Note. — This section was formerly G.S. 115C-568. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

CASE NOTES

Purpose of Article. — The primary purpose of Article 31 of former Chapter 115, similar to this Article, was to control and regulate certain private schools — specifically business, trade and correspondence schools. State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960).

§ 115D-88. Exemptions.

It is the purpose of this Article to include all private schools operated for profit: Provided, that the following schools shall be exempt from the provisions of this Article:

(1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.

(2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged to the student.

(3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.

(4) Any school for which there is another legally existing licensing or approving board or agency in this State.

(4a) Classes or schools that are equipment-specific to purchasers, users, classes, or schools offering training or instruction to acquaint purchasers or users with equipment capabilities.

(4b) Classes or schools that are taught or coached in homes or elsewhere to five or fewer students.

(4c) Classes or schools that the State Board, acting by and through the President of the Community College System, determines are avocational, recreational, self-improvement, or continuing education for already trained and occupationally qualified individuals.

(5) Any established university, professional, or liberal arts college, public or private school regulated or recognized pursuant to Chapter 115C of the General Statutes or by any other State Agency, or any State institution which has heretofore offered, or which may hereinafter

offer one or more courses covered in this Article: Provided, that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the Article shall apply to all business schools, proprietary trade schools, proprietary technical schools, or correspondence schools, as defined in this Article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards or agencies. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2; 1981, c. 423, s. 1; 1983, c. 768, s. 10; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 2.)

Editor's Note. — This section was formerly G.S. 115C-569. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — The State Board of Community Colleges has neither the legal authority nor responsibility to license massage and bodywork therapy schools pursuant to Article 8 of Chapter 115D, G.S. 115D-87 et seq., even if massage and bodywork therapy schools do not want to be exempt from Article 8 of Chapter 115D, and even though the North Carolina Board of Massage and Bodywork Therapy has only the authority to approve rather than license massage and bodywork therapy schools. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-89. State Board of Community Colleges to administer Article; issuance of diplomas by schools; investigation and inspection; rules.

(a) The State Board of Community Colleges, acting by and through the President of the Community College System, shall have authority to administer and enforce this Article and to grant and issue licenses to proprietary business schools, proprietary trade schools, proprietary technical schools, and correspondence schools, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Any such proprietary business school, proprietary trade school, proprietary technical school, or correspondence school, may by and with the approval of the State Board issue certificates and diplomas.

(c) The State Board, acting by and through the President of the Community College System, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools and by inspections made by authorized representatives of the State Board of Community Colleges, the State Board of Community Colleges shall have general supervision over business, trade, technical, and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, trade, technical, and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching and administrative staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Community Colleges is authorized to issue such rules not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article.

The State Board, acting by and through the President of the Community College System, may request any occupational licensing or approving board or agency in this State to adopt rules requiring the approval of that board or agency for a course of study. Under these rules, the board or agency shall pass on the adequacy of equipment, curricula, and instructional personnel. The State Board of Community Colleges may deny approval to a course of study that is not approved by such board or agency. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 3.)

Editor's Note. — This section was formerly G.S. 115C-570. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

§ 115D-90. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.

(a) No person shall operate, conduct or maintain or offer to operate in this State a proprietary trade school, proprietary technical school, proprietary business school, or correspondence school, unless a license is first secured from the State Board of Community Colleges granted in accordance with the provisions of this Article and the rules adopted by the Board under the authority of G.S. 115D-89. The license, when issued, shall constitute the formal acceptance by the Board of the educational programs and facilities of each school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the President of the Community College System for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school for which a license is sought:

(1) The title or name of the school or classes, together with the name and address of the owners and of the controlling officers thereof.
(2) The general field of instruction.
(3) The place or places where such instruction will be given.
(4) A specific listing of the equipment available for instruction in each field.
(5) The qualifications of instructors and supervisors.
(6) Financial resources available to equip and to maintain the school or classes.
(7) Such additional information as the State Board, acting by and through the President of the Community College System, may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the

school as being current, true, and correct in content and policy. The school bulletin shall contain the following information:

a. Identifying data, such as volume number and date of publication.
b. Names of the institution and its governing body, officials and faculty.
c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
f. Institution's policy and regulations relative to standards of progress required of the student by the institution. This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.
g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.
j. A description of the available space, facilities and equipment.
k. A course outline for each course for which approval is requested, showing:
    1. Subjects or units in the course,
    2. Type of skill to be learned, and
    3. Approximate (i) time; (ii) clock hours, and (iii) credit hours or credit hours equivalent, as appropriate, to be spent on each subject or unit.

l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the State Board, acting by and through the President of the Community College System, as provided herein, a license shall be granted to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

(1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.
(2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.
(3) Education and experience qualifications of director, administrators and instructors are adequate.
(4) The institution maintains a written record of the previous education and training of the student.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.
(6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course or subjects and indicating that training was satisfactorily completed.
(7) Adequate records as prescribed by the State Board of Community Colleges, acting by and through the President of the Community College System, are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.
(8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Community Colleges may require such evidence of compliance as is deemed necessary.
(9) The school is financially sound and capable of fulfilling its commitments for training.
(10) The school does not exceed its enrollment limitation as established by the State Board of Community Colleges.
(11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.
(12) The school's administrators, directors, owners and instructors are of good reputation and character.
(13) Such additional criteria as may be deemed necessary by the State Board.

(d) Any license issued shall be restricted to the programs of instruction or courses or subjects specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the President of the Community College System for approval of additional programs of instruction, courses, or subjects, in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 4; 1991, c. 636, s. 11.)

Editor's Note. — This section was formerly G.S. 115C-571. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

§ 115D-91. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.

(a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1: Provided, an application for the renewal of the license has been filed in the form and manner prescribed by the State Board, acting by and through the President of the Community College System, and the renewal fee has been paid: Provided, further that the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is granted to any school by the State Board of Community Colleges on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. Provided, however, the President of the Community College System may issue a 90-day, temporary operating license to a school upon its sale if the school held a valid, current license prior to the sale, and if the President finds that the school is likely to qualify after the sale for a license under this Article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 5.)

Editor's Note. — This section was formerly G.S. 115C-572. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

§ 115D-92. Authority to establish fees; Commercial Education Fund established; refund of fees.

The State Board of Community Colleges shall establish reasonable fees for licenses, renewals, and approvals granted, and for inspections performed pursuant to this Article.

The fees and licenses collected under this section shall be placed in a special fund to be designated the “Commercial Education Fund” and shall be used under the supervision and direction of the State Board of Community Colleges for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 6.)

Editor's Note. — This section was formerly G.S. 115C-573. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

Session Laws 2005-276, s. 8.14, provides: “The State Board of Community Colleges may implement an increase in fees for licensing of proprietary schools in accordance with the following fee schedule adopted by the State Board of Community Colleges on November 18, 2004:

“Initial License Fee	$2,500
“License Renewal Fee per program	$1,250 plus $50.00 per program
“Program Addition Fee	$200.00
“Single Course Addition Fee	$200.00
“Relocation/Site Visit Fee	$400.00
“Remote Site Initial Fee	$1,000
“Remote Site Renewal Fee	$750.00
“Site Assessment	$200.00”

Session Laws 2005-276, s. 1.2 provides: “This act shall be known as the “Current Operations and Capital Improvements Appropriations Act of 2005.”

Session Laws 2005-276, s. 46.3 provides: “Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium.”

Session Laws 2005-276, s. 46.5 provides: “If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.”

§ 115D-93. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.

(a) A refusal to issue, refusal to renew, suspension of, or revocation of a license under this section shall be made in accordance with Chapter 150B of the General Statutes.

(b) A decision under this section to refuse to grant, refuse to renew, suspend, or revoke a license is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(c) The State Board, acting by and through the President of the Community College System, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following:

(1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules promulgated thereunder.

(2) That the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false or misleading information relating to approval or license.

(3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Community Colleges to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the State Board of Community Colleges under the provisions of this Article.

(4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.

(5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.

(7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the State Board, acting by and through the President of the Community College System.

(8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.

(9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff.

(10) **(Effective July 1, 2010)** That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.

(11) **(Effective July 1, 2010)** That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund. (1961, c. 1175, s. 7; 1973, c. 1331, s. 3; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; c. 827, s. 53; 1989 (Reg. Sess., 1990), c. 877, s. 7; 2009-562, s. 1.)

Editor's Note. — This section was formerly G.S. 115C-574. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

Effect of Amendments. — Session Laws 2009-562, s. 1, effective July 1, 2010, added subdivisions (c)(10) and (c)(11).

§ 115D-94: Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 17.

Editor's Note. — This section was formerly G.S. 115C-575. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

§ 115D-95. (Effective until July 1, 2010) Bonds required.

(a) A guaranty bond is required for each school that is licensed to operate: Provided, however, a school that is unable to secure a bond may, with the consent of the State Board of Community Colleges, provide an alternative to a guaranty bond, as provided in subsection (c) of this section.

The State Board may revoke the license of a school that fails to maintain a bond or an alternative to a bond, pursuant to this section.

(b)(1) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate.

(2) The bond shall be in an amount determined by the State Board of Community Colleges to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars ($10,000).

Each application for a license shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the State Board. If the State Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the State Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the State Board of Community Colleges. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond:

(1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the State Board of Community Colleges; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North

Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

(2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 824, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 2010. For the section as amended July 1, 2010, see the following section, also numbered G.S. 115D-95.

Editor's Note. — This section was formerly G.S. 115C-576. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-95. (Effective July 1, 2010) Bonds required.

(a) Requirement. — An applicant for a license must comply with the bond requirements in this section. The bond covers the potential loss by students of the school of prepaid tuition and other payments made by them to a school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(b) Amount. — An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days' notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

(1) Initial licensure. — For an applicant for initial licensure of a school, the bond amount is the amount determined by the State Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school. A bond amount shall be at least twenty-five thousand dollars ($25,000).

G.S. 115D-95 is set out twice. See notes.

(2) First four renewals. — For a school that has been licensed for one year but less than six years, the bond shall be in an amount equal to the greatest amount of unearned paid tuition in the school's possession at anytime during the prior fiscal year. The bond amount shall be evaluated by the school quarterly and reported to the State Board or its representative. A quarterly evaluation requiring an increase of five percent (5%) or more in the amount of the bond held by the school shall require an immediate increase in the bond amount. Bond amounts also shall be evaluated pursuant to this subdivision and the rules of the State Board at the time of the school's annual license renewal and increased if necessary regardless of the amount of the change.

(3) Schools in operation more than five years. — A guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:

a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.

b. If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any bond amount required by sub-subdivision a. of this subdivision, the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Fund catastrophic loss amount.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may obtain in lieu of a bond:

(1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the State Board of Community Colleges; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.

(2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 824, s. 1; 2009-562, s. 2.)

Section Set Out Twice. — The section above is effective July 1, 2010. For the section as in effect until July 1, 2010, see the preceding section, also numbered G.S. 115D-95.

Editor's Note. — This section was formerly G.S. 115C-576. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

Effect of Amendments. — Session Laws 2009-562, s. 2, effective July 1, 2010, rewrote subsections (a) and (b); and substituted "may obtain in lieu of a bond" for "may file with the clerk of the superior court of the county in which the school will be located, in lieu of a bond" at the end of the introductory paragraph of (c).

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-95.1. (Effective July 1, 2010) Student Protection Fund.

(a) Definitions. — As used in this section:

(1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars ($1,000,000).

(2) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The amount is one million five hundred thousand dollars ($1,500,000).

(b) Student Protection Fund. — The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund is credited to the Fund. The State Board of Community Colleges administers the Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school licensed under this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment if the school ceases to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(c) Student Protection Fund Advisory Committee. — The President of the North Carolina Community College System shall appoint a Student Protection Fund Advisory Committee. Members of the Committee shall be appointed for terms of three years. The Committee shall advise the State Board of Community Colleges on matters related to the Fund, including, but not limited to, the adjustment of the catastrophic loss amount and Fund cap amount.

The Committee shall consist of seven members as follows:

(1) Three professional staff members of the Community Colleges System Office.

(2) An owner/director of a proprietary school with less than 100 students, or the owner/director's designee.

(3) An owner/director of a proprietary school with between 100 and 750 students, or the owner/director's designee.

(4) An owner/director of a proprietary school or group of proprietary schools with more than 750 students, or the owner/director's designee.

(5) An owner/director of a proprietary school appointed at large, or the owner/director's designee.

(d) Initial Payment. — Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars ($1,250) into the Fund.

(e) Annual Revenue Payment. — Each proprietary school operating in the State shall pay annually into the Fund an amount based on its annual gross tuition revenue generated in the State as follows:

Annual Gross Tuition Revenue	**Amount of Assessment**
$1.00 — $25,000	$200.00
$25,001 — $50,000	$250.00
$50,001 — $100,000	$300.00
$100,001 — $200,000	$400.00
$200,001 — $300,000	$500.00
$300,001 — $400,000	$600.00
$400,001 — $500,000	$700.00
$500,001 — $750,000	$1,000
$750,001 — $1,000,000	$1,250
$1,000,001 — $1,500,000	$1,500
$1,500,001 — $2,000,000	$2,000
Greater than $2,000,000	$2,000 plus one-twentieth of one percent (.05%) of annual gross tuition revenue over $2,000,000.

(f) Suspension of Payments. — If the Student Protection Fund balance is equal to or exceeds the Fund cap amount, the State Board of Community Colleges shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The State Board shall require schools to resume payments into the Fund if the balance of the Fund is less than the catastrophic loss amount.

(g) Catastrophic Assessments. — If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Community Colleges may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (e) of this section. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board shall develop a method of allocating funds among claims.

(h) Payment Required for Proprietary School Licensure. — The full and timely payment into the Fund pursuant to this section is a condition of licensure.

(i) Payments Nonrefundable. — No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(j) Student Repayment. — A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges first must issue repayment from the bonds issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board must develop a method of allocating funds among claims.

(k) Rules. — The State Board of Community Colleges shall adopt rules for the implementation of this section. (2009-562, s. 4.)

Editor's Note. — Session Laws 2009-562, s. 5, provides: "In addition to the payments required under G.S. 115D-95.1, as a condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay into the Student Protection Fund an amount based on its total enrollment for the previous calendar year as follows:

Number of Students	Amount of Assessment
0-49	$500.00
50-99	$1,000
100-499	$2,000
500-999	$3,000
1,000-1,499	$4,000
More than 1,500	$5,000.

Total enrollment equals the number of students enrolled on January 1, 2009, plus new starts during the calendar year plus students reentering from a period of nonattendance during the calendar year."

Session Laws 2009-562, s. 6, makes the section effective July 1, 2010.

§ 115D-96. (Effective until July 1, 2010) Operating school without license or bond made misdemeanor.

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary business school, a proprietary technical school, a proprietary trade school, or a correspondence school, without first having obtained the license herein required, and without first having executed the bond required, shall be guilty of a Class 3 misdemeanor, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 8; 1993, c. 539, s. 894; 1994, Ex. Sess., c. 24, s. 14(c).)

Section Set Out Twice. — The section above is effective until July 1, 2010. For the section as amended July 1, 2010, see the following section, also numbered G.S. 115D-96.

Editor's Note. — This section was formerly G.S. 115C-577. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

CASE NOTES

Evidence held insufficient to carry charges to jury. See State v. Rogers, 30 N.C. App. 298, 226 S.E.2d 829, cert. denied, 290 N.C. 781, 229 S.E.2d 35 (1976).

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

§ 115D-96. (Effective July 1, 2010) Operating school without license or bond made misdemeanor.

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary business school, a proprietary technical school, a proprietary trade school, or a correspondence school, without first having obtained the license herein required, and without first having executed the bond, paid the assessments into the Student Protection Fund, or both, as required by law, shall be guilty of a Class 3 misdemeanor, and each day the school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 8; 1993, c. 539, s. 894; 1994, Ex. Sess., c. 24, s. 14(c); 2009-562, s. 3.)

Section Set Out Twice. — The section above is effective July 1, 2010. For the section as in effect until July 1, 2010, see the preceding section, also numbered G.S. 115D-96.

Effect of Amendments. — Session Laws 2009-562, s. 3, effective July 1, 2010, substituted "without first having executed the bond, paid the assessments into the Student Protection Fund, or both, as required by law," for "without first having executed the bond required" and made a minor stylistic change.

§ 115D-97. Contracts with unlicensed schools and evidences of indebtedness made null and void.

All contracts entered into by proprietary business, proprietary technical, proprietary trade, or correspondence schools, with students or prospective students, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this Article. (1957, c. 1000; 1961, c. 1175, s. 11; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 9.)

Editor's Note. — This section was formerly G.S. 115C-578. It was recodified by Session Laws 1987, c. 442, s. 2, effective July 1, 1987.

OPINIONS OF ATTORNEY GENERAL

Massage and Bodywork Therapy Schools. — Massage and bodywork therapy schools that are exempt from Article 8 of Chapter 115D, G.S. 115D-87 et seq., need not comply with any of the requirements of Article 8, including the provisions of this section. See opinion of Attorney General to Charles P. Wilkins, Counsel, North Carolina Board of Massage and Bodywork Therapy, 2000 N.C. AG LEXIS 27 (3/15/2000).

Chapter 115E.

Private Educational Facilities Finance Act.

Sec.
115E-1 through 115E-23. [Recodified.]

§§ 115E-1 through 115E-23.: Recodified as G.S. 159D-35 through 159D-57 by Session Laws 2000-179, s. 1, effective July 1, 2000.

Editor's Note. — This Chapter was rewritten by Session Laws 2000-179, s. 2, and recodified as Chapter 159D, Article 2, by Session Laws 2000-179, s. 1.

Chapter 116.
Higher Education.

Article 1.
The University of North Carolina.

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Sec.
116-1. Purpose.
116-2. Definitions.
116-2.1. [Repealed.]

Part 2. Organization, Governance and Property of the University.

116-3. Incorporation and corporate powers.
116-3.3. Mediation matters.
116-4. Constituent institutions of the University of North Carolina.
116-4.1. [Repealed.]
116-5. Initial membership of Board of Governors.
116-6. Election and terms of members of Board of Governors.
116-6.1. Student member of the Board of Governors.
116-7. General provisions concerning members of the Board of Governors.
116-8. Chairman, vice-chairman and secretary.
116-9. Meetings of Board of Governors.
116-10. Committees.
116-11. Powers and duties generally.
116-11.1. [Transferred.]
116-11.2. Duties regarding programs in education administration.
116-12. Property and obligations.
116-13. Powers of Board regarding property and services subject to general law.
116-13.1. Capital facilities; reports.
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116-14. President and staff.
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116-16. Tax exemption.
116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees.
116-17.1. Dependent care assistance program.
116-17.2. Flexible Compensation Plan.
116-18. Information Center established.
116-19. Contracts with private institutions to aid North Carolina students and licensure students; reporting requirement.

Sec.
116-20. Scholarship and contract terms; base period.
116-21. Contract forms; reports; audits; regulations.
116-21.1. Financial aid for North Carolina students and licensure students attending private institutions of higher education in North Carolina.
116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.
116-21.3. Legislative tuition grant limitations.
116-21.4. Limitations on expenditures.
116-21.5. [Repealed.]
116-21.6. Private medical schools — medical student grants.
116-22. Definitions applicable to §§ 116-19 to 116-22.
116-22.1 through 116-26. [Transferred.]
116-27 through 116-29. [Repealed.]
116-29.1. University Cancer Research Fund.
116-29.5. [Repealed.]
116-30. [Transferred.]

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116-30.01. [Recodified.]
116-30.1. Special responsibility constituent institutions.
116-30.2. Appropriations to special responsibility constituent institutions.
116-30.3. Reversions.
116-30.3A. Availability of excess receipts.
116-30.4. Position management.
116-30.5. Impact on education.
116-30.6. [Repealed.]
116-30.7. Biennial projection of enrollment growth for The University of North Carolina.
116-30.8 through 116-30.19. [Reserved.]

Part 2B. Private, Nonprofit Corporations.

116-30.20. Establishment of private, nonprofit corporations.

Part 3. Constituent Institutions.

116-31. Membership of the boards of trustees.
116-31.10. Powers of Board regarding certain purchasing contracts.
116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

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116-31.12. Acquisition of real property by lease.
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116-35. Electric power plants, campus school, etc.
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116-36.2. Regulation of special funds of individual institutions.
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116-36.5. Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.
116-36.6. East Carolina University School of Medicine; Medicare receipts.
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116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.
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116-39. Agricultural research stations.
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116-40.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.
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116-40.5. Campus law enforcement agencies.
116-40.6. East Carolina University Medical Faculty Practice Plan.
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116-40.8. University of North Carolina at Pembroke designated as North Carolina's Historically American Indian University.
116-40.9. Board of Governors' Medical Scholarship Loan Program.
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116-40.10. Board of Governors' Dental Scholarship Loan Program.
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116-40.21. Board of governors may authorize management flexibility.
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116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries.
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ment Trust Fund; establishment; maintenance.
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116-43.15. Use of college or university facilities by public school students pursuant to cooperative programs.
116-44. [Repealed.]
116-44.1, 116-44.2. [Transferred.]

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116-44.4. Regulation of traffic and parking and registration of motor vehicles.
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Part 7. Fire Safety.

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116-44.7. Exemption from certain fees and charges.
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Regional Universities.

116-44.10 through 116-44.16. [Repealed.]

Article 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

116-45, 116-46. [Repealed.]
116-46.1 through 116-46.4. [Transferred.]

Article 3.

Community Colleges.

Sec.
116-47 through 116-62.1. [Repealed.]

Article 4.

University of North Carolina School of the Arts.

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116-64. Establishment of school.
116-65. To be part of University of North Carolina; membership of Board of Trustees.
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116-67. [Repealed.]
116-68. Endowment fund.
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Article 5A.

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116-74.6, 116-74.7. [Transferred.]
116-74.8 through 116-74.20. [Reserved.]

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North Carolina Principal Fellows Program.

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Article 10.

State School for the Blind and the Deaf in Raleigh.

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Article 11.

North Carolina School for the Deaf at Morganton.

116-120. [Transferred.]
116-121 through 116-124. [Repealed.]
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Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

116-125.1 through 116-125.5. [Transferred.]

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116-126 through 116-137. [Repealed.]

Article 13.

Colored Orphanage of North Carolina.

116-138 through 116-142. [Transferred.]

Article 13A.

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116-142.1 through 116-142.10. [Repealed.]

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Article 15.

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Article 16.

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116-158. Powers and duties generally.
116-158.1 through 116-158.4. [Transferred.]
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Article 17.

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Article 18.

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116-171 through 116-174. [Transferred.]

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Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

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116-179. Sale of bonds; functions performed by executive committee.
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Article 20.

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Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

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116-193. Fixing fees, rents and charges; sinking fund.
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116-198.36. Proceeds of bonds are deemed trust funds.
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116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.
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116-209.37. [Reserved.]
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Disruption on Campuses of State-Owned Institutions of Higher Education.

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Article 27.

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116-229. Post-towing procedures.

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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions. (1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

Cross References. — As to information and financial assistance for nursing students and inactive nurses, see Article 9B of Chapter 90, G.S. 90-171.50 et seq.

William Friday Institute for Higher Education Leadership. — Session Laws 2004-124, s. 6.28(a)-(c), provides: "(1) There is a serious and continuing need for systematic education and training and education within The University of North Carolina to prepare men and women to perform effectively in progressively responsible positions of administrative leadership in colleges and universities in North Carolina and the nation.

"(2) The Board of Governors of The University of North Carolina (UNC) and the staff in the Office of the President are in agreement that The University of North Carolina must provide a mechanism by which talented faculty and staff within the UNC system can move into administrative positions.

"(3) A significant component of increasing the strength of The University of North Carolina is increasing the administrative acumen of its faculty, department chairs, deans, and other administrators to prepare them for leadership positions.

"(4) Historically, academic administrators moved into their positions directly from the faculty, but the complexities of leadership make such changes nearly impossible today.

"(5) Business and industry focus on succession planning, climate surveys, and leadership development, but universities have been slower to respond to the need to develop talent within the organization.

"(6) Some universities have developed leadership programs, and the best of these programs nationally are those that are responsive to the culture of the institution or system.

"(7) Establishing an institute for higher education leadership development will help change the current pattern within the UNC system by providing ongoing professional development for faculty and administrators on UNC campuses.

"(8) Faculty and administrators will have opportunities to learn 'best practices' from their colleagues as well as from national experts in key areas, and models will be provided that can be transferred back to the campuses.

"(9) Administrative internships on campuses and at the Office of the President will provide aspiring administrators opportunities to experience new environments and to learn leadership skills through observation and participation.

"(10) It is critical that The University of North Carolina provide opportunities for faculty within the system to advance professionally without having to leave North Carolina.

"The Board of Governors of The University of North Carolina shall establish the William Friday Institute for Higher Education Leadership (the 'Institute'). The Board of Governors of The University of North Carolina shall also establish an advisory board for the Institute.

"The purpose of the Institute is to enable students, faculty, and administrators on the campuses of The University of North Carolina to explore and validate their interest in and fitness for careers in academic administration and to gain skills, insight, information, contacts, and experience through ongoing professional leadership development programs."

Study Feasibility of Adding North Carolina Wesleyan College to UNC System. — Session Laws 2006-66, s. 9.4(a), provides: "The Board of Governors of The University of North Carolina shall study the feasibility of making North Carolina Wesleyan College a constituent institution of The University of North Carolina. The study shall include all of the following:

"(1) Mission. — The Board of Governors shall evaluate the potential missions of the campus that would meet the academic and economic needs of the region, the State, and of the University System. The Board of Governors shall take into account the need to avoid duplication of curriculum and programs at other campuses, particularly those within the same geographic area, unless the need for duplication is warranted. The Board of Governors shall seek recommendations, suggestions, and comments from community leaders, educational experts, and business leaders in defining the mission of the new campus. Particular focus shall be placed on utilizing the campus in a manner that addresses both the economic and educational challenges of the region in a unique and focused manner, such as in the areas of science, technology, education, and economic development.

"(2) Cost. — The Board of Governors shall analyze the potential operating costs of the campus. Factors such as the mission, staff and faculty salaries, benefits, total faculty and staff levels, total projected student enrollment, facility needs, and tuition rates shall be taken into account.

"(3) Facility Needs. — The Board of Governors shall consider what additional facility needs there may be, taking into account the proposed mission of the campus. Examples of those needs may be lab facility upgrades, new buildings to house an expanded student population, and associated infrastructure expansion.

"(4) Asset Transfer. — The Board of Governors shall obtain legal and financial analyses to determine if there are any restrictions attached to any of the College's assets (title to property, gifts to endowment, assets purchased with restricted grant funds, etc.) that would prohibit the transfer of the assets to the State. If there are restrictions, then the analyses shall also include the steps necessary to lift the restrictions and the costs of obtaining a clear title.

"(5) Liability Analysis. — The Board of Governors shall also obtain a legal analysis to determine whether there are pending liabilities against the campus or reasonably foreseeable future liabilities against the campus. If there are such liabilities, the legal analysis shall also address the action needed to avoid transfer of any liability to the State.

"(6) Transition of Current Students/Programs. — The Board of Governors shall consider how best to handle the transition of the currently enrolled student population, both on and off campus, into continuing or new curriculum programs during the conversion period.

"(7) Personnel. — The Board of Governors shall assess the employment status of current personnel to determine what, if any, contractual and other employment issues may arise in the conversion.

"(8) Legislative Action. — The Board of Governors shall determine the legislative action and statutory amendments needed to authorize and implement the conversion."

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 936, implements a joint report from the Board of Governors and the Office of State Budget and Management to provide management incentives and flexibility to achieve budget savings and increased efficiency for the constituent institutions of The University of North Carolina. Section 7 of c. 936, as amended by Session Laws 1991, c. 346, s. 1, directs the Board of Governors of The University of North Carolina to adopt standards to create and enhance an organized program of public service and technical assistance to the public schools; provides certain criteria for the program; and provides that the Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on its progress in implementing the provisions of this section.

Session Laws 1989 (Reg. Sess., 1990), c. 997, transfers the Veterans and Military Education Program from the Department of Community Colleges and the State Board of Community Colleges to The University of North Carolina.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 19, transfers the Center for Prevention of School Violence currently operating under the University of North Carolina, and all functions, powers, duties, and obligations vested in the University of North Carolina for the Center, to the Office of Juvenile Justice (now the Department of Juvenile Justice and Delinquency Prevention.) The Center, as a component of the Office of Juvenile Justice (Department of Juvenile Justice and Delinquency Prevention), is to continue to consult with the University of North Carolina and the Department of Public Instruction to enhance research opportunities and specialized study areas such as teacher preparation, school resource officer development, suicide prevention, and best practices.

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Session Laws 2001-312, s. 1(a)-(c), provides for The Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, to study the measures used by the constituent institutions to make admissions, placement, and advanced placement decisions regarding incoming freshmen and to assess the various uses made of those measures and the validity of those measures with regard to a student's academic performance and as predictors of a student's future academic performance, as well as whether other alternative measures may be equally valid or more accurate as indicators of a student's academic performance. In the study, particular consideration is to be given to whether or not to eliminate, continue, or change the emphasis placed on the Scholastic Aptitude Test (SAT) and ACT Assessment for North Carolina students as a mandatory university admissions measure. The study is also to review incorporating the State's testing program into admissions, placement, and advanced placement decisions. Based on its findings, the Board of Governors of The University of North Carolina, in cooperation with the State Board of Education and the State Board of Community Colleges, is authorized to develop recommendations to improve the measures used to assess a student's academic performance, to adopt alternative measures, or to use various combinations of both to determine more accurately a student's academic knowledge and performance. The Board of Governors may make an interim report to the Joint Legislative Education Oversight Committee no later than March 1, 2002, and shall submit a final report by December 1, 2003. It is recommended that the study continue beyond the final report date.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 31.2(a)-(c), provides: "(a) The Southern Regional Education Board currently operates an Academic Common Market program. Under this program, qualified students from participating states may apply to attend programs at public universities in participating states that are not available in their home state's university system. North Carolina's participation for graduate programs would provide a cost-effective means of offering educational access for North Carolina residents. North Carolinians would be able to attend graduate programs that are not available at The University of North Carolina at reduced rates, and the State would avoid the cost associated with the development of new academic programs.

"(b) The Board of Governors of The University of North Carolina may establish a pilot program for participation in the Southern Regional Education Board's Academic Common Market at the graduate program level. The Board of Governors shall examine the graduate programs offered in The University of North Carolina system and select for participation only those graduate programs that are likely to be unique or are not commonly available in other Southern Regional Education Board states. Out-of-state tuition shall be waived for students who are residents of other Southern Regional Education Board states and who are participating in the Academic Common Market program. If accepted into The University of North Carolina graduate programs that are part of the Academic Common Market, these students shall pay in-State tuition and shall be treated for all purposes of The University of North Carolina as residents of North Carolina. Prior to the beginning of this pilot, the Board of Governors shall submit its list of graduate programs selected to be a part of the pilot program to the Joint Legislative Education Oversight Committee.

"(c) The pilot programs established under this section [s. 31.2 of Session Laws 2001-424] shall terminate July 1, 2005. However, once a student is enrolled in The University of North Carolina system under the Academic Common Market program, the student shall be entitled to pay in-State tuition as long as the student is enrolled in that graduate program. The Board of Governors shall report the success of the Academic Common Market program to the Joint Legislative Education Oversight Committee by December 31, 2003, and by January 31, 2005, and the Committee may recommend changes, if any are appropriate, to the pilot program at either of those times."

Session Laws 2001-424, s, 31.14, provides: "The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1, 2002, and annually thereafter, on the amount of overhead receipts for The University System and the use of those receipts."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-284, ss. 1 and 2, provide: "The General Assembly finds that additional data are needed to determine the adequacy with which the State's teacher education programs are preparing teachers to teach students with disabilities. The Board of Governors of The University of North Carolina, in consultation with the State Board of Education, shall study the effectiveness of the current teacher education programs in preparing new teachers to educate students with disabilities.

"The Board of Governors shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by May 15, 2008. The report shall include (i) evidence of the effectiveness of the current teacher education programs in preparing students to educate students with disabilities; (ii) documentation that the requirement for including specified demonstrated competencies in G.S. 115C-296(b) is being met; and (iii) identification of changes needed in teacher education programs to better prepare teachers to teach students with disabilities, and a timeline for the implementation of the changes."

Session Laws 2007-413, s. 1(a) and (b), provides: "(a) The President of The University of North Carolina (UNC) shall appoint a Task Force to examine the application of the State Personnel Act to the University of North Carolina with a goal of making recommendations that will:

"(1) Improve the ability of the University to attract, reward, and retain high quality employees;

"(2) Enable the University to better meet the needs of its employees; and

"(3) Improve the efficiency of UNC personnel operations.

"The Task Force membership shall include chancellors, representatives of the UNC Staff Assembly who are subject to the State Personnel Act, human resources professionals, other UNC employees exempt from the State Personnel Act, and a representative of the Office of State Personnel.

"(b) The Task Force shall report to the President of The University of North Carolina and to the UNC Board of Governors by January 15, 2008. By March 24, 2008, the UNC Board of Governors shall forward the recommendations that it approves, as presented or as modified, to the Joint Legislative Education Oversight Committee of the General Assembly for consideration of any legislative proposals during the 2008 Regular Session."

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility - Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

For provisions of Session Laws 2009-339 preamble and ss. 1 through 11, which created the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission, see notes at G.S. 115C-10 and G.S. 120-70.80.

Session Laws 2009-451, s. 9.19, provides: "The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina entities. Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider reducing budgets for senior and middle management personnel, centers and institutes, low enrollment degree programs, speaker series, and nonacademic activities. The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of the The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets. In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification. Budget reductions shall not be considered in funding available for need-based financial aid."

Session Laws 2009-451, s. 9.24(a)-(d), provides: "(a) In order to ensure all North Carolinians have access to attend undergraduate, graduate, and professional degree programs at institutions of higher education there is created the Joint Legislative Study Committee on State Funded Student Financial Aid. The Committee shall consist of 10 members. The Speaker of the House of Representatives shall appoint five members, and the President Pro Tempore of the Senate shall appoint five members. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority shall cooperate with this study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

"The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Committee. The Committee may meet at any time upon the joint call of the cochairs. Vacancies on the Committee shall be filled by the same appointing authority as made the initial appointment.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(b) The Committee shall study all of the following:

"(1) How best to use State funds to provide grants, loans, and scholarships to students for the purpose of attending undergraduate, graduate, and professional degree programs at institutions of higher education within North Carolina. As part of its study, the Committee shall also examine the availability and sustainability of existing State, federal, and private funding sources for student grants, loans, and scholarships.

"(2) How best to administer State funded student financial aid. As part of its study the Committee shall review any action or pending action by the federal government regarding the federal funding that supports the administration of student financial aid in the State. The Committee shall also examine the sustainability and efficiency of the current governance structure for awarding student financial aid at the State level and the linkage of that governance structure to federal student loan programs and to student loan programs funded through escheats.

"(3) The current governance of the North Carolina State Education Assistance Authority (NCSEAA).

"(4) The feasibility of consolidating scholarship, loan, and grant programs for North Carolinians including all programs for which eligibility is based on the Free Application for Federal Student Aid (FAFSA).

"(5) The feasibility of consolidating loans, grants, and scholarships available for teacher education students.

"(6) The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and any other criteria that make the scholarship and grant either similar to other scholarships in the same category or that make the scholarship unique from others in its category.

"(7) Marketing strategies for grant, loans, and scholarships and how to make the information more transparent, understandable, and accessible to the general public and to the students who may be interested in applying for financial aid.

"(8) Any other issues the Committee deems relevant to this study.

"(c) The Committee may make an interim report of its findings and recommendations, including any legislative recommendations, to the 2009 General Assembly, 2010 Regular Session, and shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2011 General Assembly. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

"(d) From the funds appropriated by this act to the General Assembly for the 2009-2010 fiscal year and for the 2010-2011 fiscal year, the Legislative Services Commission may allocate monies to fund the work of the Committee."

CASE NOTES

University and Its Subdivisions Are "Alter-Egos" of State for Diversity Purposes. — The University of North Carolina and the University of North Carolina at Chapel Hill are "alter-egos" of the State of North Carolina for purposes of federal diversity jurisdiction. Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

Cited in Nova Univ. v. Board of Governors, 305 N.C. 156, 287 S.E.2d 872 (1982).

OPINIONS OF ATTORNEY GENERAL

TACIT Program Not Violative of G.S. 66-58. — The TACIT Program, offered by North Carolina State University's Department of Urban Affairs to units of local government to educate employees with respect to selecting appropriate computer equipment, does not violate the provisions of G.S. 66-58. See opinion of Attorney General to Mr. George E. Tatum, Register of Deeds, Cumberland County, 55 N.C.A.G. 101 (1986).

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.

(4) "Constituent institution" or "institution" means one of the 16 public institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural

and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics.

(5) "President" means the President of the University of North Carolina.

(6) "Vending facilities" has the same meaning as it does in G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171; 1995 (Reg. Sess., 1996), c. 603, s. 1; 2006-66, s. 9.11(a); 2006-203, s. 39; 2008-192, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 39, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote subdivision (6).

Session Laws 2008-192, s. 1, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (4).

OPINIONS OF ATTORNEY GENERAL

Western Carolina University (WCU) is not a public utility subject to supervision by the Commission, except that, pursuant to G.S. 116-35, sales to the public of excess power must be "at a rate or rates approved by the Utilities Commission." See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

§ 116-2.1: Repealed by Session Laws 1971, c. 1244, s. 1.

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers.

The Board of Trustees of the University of North Carolina is hereby redesignated, effective July 1, 1972, as the "Board of Governors of the University of North Carolina." The Board of Governors of the University of North Carolina shall be known and distinguished by the name of "the University of North Carolina" and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply to same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the University, or according to the terms of donation.

The corporation shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue. (1971, c. 1244, s. 1.)

Editor's Note. — Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2003-126, s. 8.3, effective July 1, 2004.

Session Laws 2002-126, s. 9.16, provides: "The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on:

"(1) Any financing of buildings or other facilities, regardless of the ownership of those buildings or other facilities, located on land owned by The University of North Carolina or the constituent institutions of The University of North Carolina; and

"(2) All fiscal liabilities or contingent liabilities, including payments for debt service or other contractual arrangements, of The University of North Carolina or any constituent institution."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

Purpose and scope of this section is to allow the University of North Carolina and its constituent institutions to sue and be sued in their own names, but only as otherwise specifically provided by law; it does not abolish the doctrine of sovereign immunity. Truesdale v. University of N.C., 91 N.C. App. 186, 371 S.E.2d 503 (1988), appeal dismissed and cert. denied, 323 N.C. 706, 377 S.E.2d 230, cert. denied, 493 U.S. 808, 110 S. Ct. 50, 107 L. Ed. 2d 19 (1989), overruled on other grounds, Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

This section allows the University of North Carolina and its constituent institutions to be sued only as otherwise specifically provided by law. Jones v. Pitt County Mem. Hosp., 104 N.C. App. 613, 410 S.E.2d 513 (1991).

Legislative Intent. — When read together, the language of the act and of this section, making The University of North Carolina (UNC) and its constituent institutions "able and capable in law to sue and be sued in all courts whatsoever," evidence a legislative intent that all tort claims against UNC and its constituent institutions for money damages be brought before the North Carolina Industrial Commission. Jones v. Pitt County Mem. Hosp., 104 N.C. App. 613, 410 S.E.2d 513 (1991).

Section does not operate as a waiver of the State's immunity under U.S. Const., Amend. XI. Huang v. Board of Governors, 902 F.2d 1134 (4th Cir. 1990).

But Merely Allows UNC and Its Constituent Institutions to Sue and Be Sued in Their Own Names. — This section contains no express language waiving North Carolina's constitutional immunity, nor does its language justify any inference of waiver. Moreover, even if this provision could be construed as waiver of North Carolina's sovereign immunity in its own courts, it lacks any indication that North Carolina has consented to suit in federal court. The provision, correctly construed, does no more than allow UNC and its constituent institutions to sue and be sued in their own names but only as otherwise specifically provided by law. Huang v. Board of Governors, 902 F.2d 1134 (4th Cir. 1990).

Section does not waive North Carolina's sovereign immunity in its own courts, let alone its immunity under U.S. Const., Amend. XI in federal court. North Carolina law nowhere specifically provides for waiver of immunity under U.S. Const., Amend. XI. Huang v. Board of Governors, 902 F.2d 1134 (4th Cir. 1990).

Capacity to Take Devise. — See Brewer v. University of N.C., 110 N.C. 26, 14 S.E. 644 (1892), decided under former § 116-3, existing prior to the 1971 revision of this Part.

University and Its Subdivisions Are "Alter-Egos" of State for Diversity Purposes. — The University of North Carolina and The University of North Carolina at Chapel Hill are "alter-egos" of the State of North Carolina for purposes of federal diversity jurisdiction. Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

Relationship of Board of Governors to Its Campuses. — The University of North Carolina is, by definition, one State agency, not 16 separate, independent agencies. The statute constitutes the Board of Governors of UNC as a body politic and corporate. This section does not grant this status to any of the 16 campuses that the Board administers. Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990), cert. denied, 500 U.S. 916, 111 S. Ct. 2013, 114 L. Ed. 2d 100 (1991).

Individual campuses enjoy a substantial measure of autonomy; they operate largely free from control of the Board of Governors. On a day-to-day basis, operations of campuses are determined primarily by their respective chancellors and boards of trustees. This is true, however, because of the independence that the Board has allowed the campuses, and not because of any autonomy with which they are inherently endowed under relevant statutes. Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990), cert. denied, 500 U.S. 916, 111 S. Ct. 2013, 114 L. Ed. 2d 100 (1991).

Extent to Which University May Be Sued. — This section allows the University to be sued only to the extent that the State can be sued and does not operate to abolish the doctrine of sovereign immunity with regard to the University. Board of Governors v. Helpingstine, 714 F. Supp. 167 (M.D.N.C. 1989).

Sovereign immunity protects the University from suit under G.S. 75-1.1 for restraint of trade. Board of Governors v. Helpingstine, 714 F. Supp. 167 (M.D.N.C. 1989).

Power to Operate Water System. — The University of North Carolina as a body politic and corporate has authority to own, maintain, and operate a water system to provide services for itself and to any other person, firm, or corporation desiring such services outside the University. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231, cert. denied, 282 N.C. 155, 191 S.E.2d 602 (1972).

Discretionary Authority to Serve Non-

resident Consumers. — The University of North Carolina is under no obligation to maintain a water system for the town or any person, firm, or corporation other than itself. A municipality which operates its own waterworks has the discretionary power to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident consumers. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231, cert. denied, 282 N.C. 155, 191 S.E.2d 602 (1972).

And to Set Different Rates for Services. — Having exercised its discretion to furnish water outside its corporate limits, The University of North Carolina has discretionary authority to set the rates which it will charge for such services, and it retains the authority to specify the terms upon which nonresidents may obtain its water. In exerting this authority, it may fix a different rate from that charged within the corporate limits. The defendant, having accepted these services for almost half a century is not now in a position to complain about the rates. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231, cert. denied, 282 N.C. 155, 191 S.E.2d 602 (1972).

Applied in Uzzell v. Friday, 592 F. Supp. 1502 (M.D.N.C. 1984); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990).

§ 116-3.3. Mediation matters.

(a) Evidence of statements made and conduct occurring in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any proceeding in any action on the same claim or any other claim, administrative or judicial, except in a proceeding to enforce a signed settlement agreement. Such evidence is not a public record under Chapter 132 of the General Statutes. Any evidence discoverable or admissible prior to the mediation shall remain discoverable and admissible, whether or not it is presented or discussed during mediation.

(b) No mediator, person training to become a mediator, nor participant in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall be compelled to testify or produce evidence with respect to the mediation of the personnel matter in any civil proceeding, except to attest to the signing of any such agreement. (2004-154, s. 1.)

§ 116-4. Constituent institutions of the University of North Carolina.

The University of North Carolina shall be composed of the following institutions of higher education: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2; 2006-66, s. 9.11(b); 2008-192, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Session Laws 2009-407, ss. 1 and 2, provide: "SECTION 1. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall help the State prepare for increased numbers of older adults, due to the aging of the baby boomer generation and the influx of elderly retirees into the State. Activities shall include, but are not limited to, the following:

"(1) Organizing and facilitating meetings of gerontologists, researchers, county representatives, directors of area agencies on aging, and providers of State services, to collectively identify and prioritize issues for the State to address.

"(2) Working with the North Carolina Association of County Commissioners, the University of North Carolina School of Government, higher education departments of municipal and regional planning and their partners, and area agencies on aging to establish a Web site containing:

"a. Information on fostering retiree and volunteer involvement, and

"b. Models of local planning efforts, in order to assist municipalities in addressing accessibility and service delivery for increasing numbers of older adults.

"SECTION 2. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall make progress reports on the activities required by this act to the Governor and to the North Carolina Study Commission on Aging on or before March 1, 2010, and on or before November 1, 2010."

Effect of Amendments. — Session Laws 2008-192, s. 2, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the middle of the paragraph.

Legal Periodicals. — For 1984 survey, "The Rights of University Faculty to Their Inventive Ideas," see 63 N.C.L. Rev. 1248 (1985).

CASE NOTES

East Carolina University School of Medicine is a constituent institution of The University of North Carolina. Jones v. Pitt County Mem. Hosp., 104 N.C. App. 613, 410 S.E.2d 513 (1991).

Punitive damages were not recoverable in Title VII case against North Carolina State University because under 42 U.S.C. § 1981a(b)(1), punitive damages cannot be recovered from a governmental entity. Bryant v. Locklear, 947 F. Supp. 915 (E.D.N.C. 1996).

Cited in Truesdale v. University of N.C., 91 N.C. App. 186, 371 S.E.2d 503 (1988); Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990); Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

§ 116-4.1: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-5. Initial membership of Board of Governors.

(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

(1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

(2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts,"

Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", and Winston-Salem State University.

(3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.

(4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June 30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the University of North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the University of North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 3; 2008-192, ss. 3, 12.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — Session Laws 2008-192, ss. 3 and 12, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (a)(2); and substituted "University of North Carolina School of the Arts" for "North Carolina School of the Arts" twice in subsection (b).

§ 116-6. Election and terms of members of Board of Governors.

(a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. Sixteen members shall be elected at the regular legislative session in 1993 and every two years thereafter. The Senate and the House of Representatives shall each elect one-half of the persons necessary to fill the vacancies on the Board of Governors.

(b) Repealed by Session Laws 2001-503, s. 1, effective December 19, 2001.

(c) In electing members to the Board of Governors, the Senate and the House of Representatives shall select from a slate of candidates made in each house. The slate shall be prepared as provided by resolution of each house. If a sufficient number of nominees who are legally qualified are submitted, then the slate of candidates shall list at least twice the number of candidates for the total seats open. All qualified candidates shall compete against all other qualified candidates. In 1993 and biennially thereafter, each house shall hold their elections within 30 legislative days after appointments to their education committees are complete.

(d) All terms shall commence on July 1 of odd-numbered years and all members shall serve for four-year overlapping terms.

(e) No person may be elected to:

(1) More than three full four-year terms in succession;

(2) A four-year term if preceded immediately by election to two full eight-year terms in succession; or

(3) A four-year term if preceded immediately by election to an eight-year term and a four-year term in succession.

Resignation from a term of office does not constitute a break in service for the purpose of this subsection. Service prior to the beginning of those terms in 1989 shall be included in the limitations.

(f) Any person who has served at least one full term as chairman of the Board of Governors shall be a member emeritus of the Board of Governors for one four-year term beginning at the expiration of that member's regular elected term. Any person already serving as an emeritus member may serve an additional four-year term beginning July 1, 1991. Members emeriti have all the rights and privileges of membership except they do not have a vote.

(g) Effective July 1, 1991, and thereafter, any person who has served at least one term as a member of the Board of Governors after having served as Governor of North Carolina shall be a member emeritus of the Board of Governors, with all the rights and privileges of membership as in G.S. 116-6(f). (1971, c. 1244, s. 1; 1987, c. 228; 1989, c. 274; 1991, c. 220, ss. 2, 3; c. 436, s. 1; 2001-503, s. 1.)

Editor's Note. — Session Laws 1991, c. 220, s. 4, provides that section 2 of c. 220, which amended subsection (f), shall be implemented within funds available for the operations of the Board of Governors of The University of North Carolina and that nothing in s. 2 of this act shall be construed to obligate the General Assembly to appropriate additional funds for the operating costs of the Board of Governors.

CASE NOTES

Standing to Challenge Statute. — State residents had standing to challenge a state law governing election to the state university's board of governors that required that certain categories of minorities have two members each on the board, even though the residents had not been nominated to the election slate and were thus unable to compete for the vacancies. Davis v. State, 180 F. Supp. 2d 774, 2001 U.S. Dist. LEXIS 23257 (E.D.N.C. 2001).

Applied in Poovey v. Edmisten, 526 F. Supp. 759 (E.D.N.C. 1981); Uzzell v. Friday, 592 F. Supp. 1502 (M.D.N.C. 1984).

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-6.1. Student member of the Board of Governors.

(a) Commencing July 1, 1991, and during his continuance as a student in good standing at a constituent institution of The University of North Carolina, the person serving as president of the University of North Carolina Association of Student Governments (UNCASG) or his designee shall serve ex officio as a member of the Board of Governors. This student member shall be in addition to the 32 members elected to the Board of Governors.

(b) The student member shall have all the rights and privileges of membership, except that he shall not have a vote. (1991, c. 220, s. 1.)

§ 116-7. General provisions concerning members of the Board of Governors.

(a) All members of the Board of Governors shall be selected for their interest in, and their ability to contribute to the fulfillment of, the purposes of the Board of Governors, and all members shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. In electing members, the objective shall be to obtain the services of the citizens of the State who are qualified by training and experience to administer the affairs of The University of North Carolina. Members shall be selected based upon their ability to further the educational mission of The University through their knowledge and understanding of the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

(b) No member of the General Assembly or officer or employee of the State, The University of North Carolina, or any constituent institution may be a member of the Board of Governors. No spouse of a member of the General Assembly, or of an officer or employee of The University of North Carolina, or of any constituent institution may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes an officer or employee of The University of North Carolina or of any constituent institution shall be deemed thereupon to resign from his membership on the Board of Governors.

(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the Board of Governors, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant.

(c) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the Board to inform the Speaker of the House of Representatives and the President of the Senate of the vacancy. The chamber that originally elected the vacating member shall elect a person to fill the vacancy. The vacancy shall remain unfilled until the appropriate chamber of the General Assembly elects a person to fill the vacancy.

The vacancy shall be filled not later than the adjournment sine die of the next regular session of the General Assembly. The election shall be for the remainder of the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for four successive regular meetings of the Board, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 1977, c. 875; 1982, Ex. Sess., c. 1, s. 1; 1991, c. 436, s. 2; 2001-503, s. 2; 2006-201, s. 2(b); 2007-278, s. 1.)

Editor's Note. — For a prior similar provision, see Session Laws 2001-491, ss. 31.1 through 31.5.

Session Laws 2006-201, s. 2(b), which added subsection (b1), is applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed on or after January 1, 2007.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

CASE NOTES

Banking Commissioners Are State Officers Within Subsection (b). — A member of the State Banking Commission is an officer of the State within the meaning of subsection (b) of this section. Sansom v. Johnson, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

Cited in Poovey v. Edmisten, 526 F. Supp. 759 (E.D.N.C. 1981).

OPINIONS OF ATTORNEY GENERAL

Generally, if a person holds a position with the State, whether as employee or officer, he is prohibited from serving on the Board of Governors. See opinion of Attorney General to Honorable Robert W. Scott, Governor, 41 N.C.A.G. 623 (1971).

School Officials Are Not State Officers or Employees. — See opinion of Attorney General to Honorable Wm. Friday, President, University of North Carolina, Chapel Hill, 42 N.C.A.G. 239 (1973).

§ 116-8. Chairman, vice-chairman and secretary.

The Board of Governors shall elect from its membership for two-year terms, and until their successors have been elected and qualified, a chairman, a vice-chairman and a secretary. No person may serve as chairman more than four years in succession. (1971, c. 1244, s. 1.)

§ 116-9. Meetings of Board of Governors.

The Board of Governors shall meet at stated times established by the Board, but not less frequently than six times a year. The Board of Governors shall also meet with the State Board of Education and the State Board of Community Colleges at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). A quorum for the conduct of business shall consist of a majority of the members. (1971, c. 1244, s. 1; 1987 (Reg. Sess., 1988), c. 1102, s. 3.)

§ 116-10. Committees.

The Board of Governors shall have power to appoint from its own number committees which shall be clothed with such powers as the Board of Governors may confer. No committee may reverse a decision concerning policy taken by the Board of Governors at a regular meeting. (1971, c. 1244, s. 1.)

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of

the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(4b) The Board of Governors shall encourage the constituent institutions to offer courses in American Sign Language as a modern foreign language.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(5a) [Expired.]

(5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) The Board shall set enrollment levels of the constituent institutions.

(8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.

(9)a. The Board of Governors shall develop, prepare and present to the Governor and the General Assembly a single, unified recommended budget for all of the constituent institutions of The University of North Carolina. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The president may present to the General Assembly an updated estimate of tuition, fees, and other receipts by June 15 of each year to be included in the budget for the following fiscal year.

a1. The Board of Governors shall provide full documentation and justification of any enrollment change funding request at the time it is recommended. This documentation and justification shall include the most recent academic year's actual enrollment numbers in the same format in which the growth increase request is made. The actual enrollment numbers shall be the actual student credit hours (SCH) or full-time equivalencies (FTE).

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions.

d. Repealed by Session Laws 1987, c. 795, s. 27.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Community Colleges System Office and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, and the boards of trustees of the institutions.

(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors.

(12b) The Board of Governors of The University of North Carolina shall designate the UNC programs that will comprise the UNC Center for School Leadership Development. The Board of Governors shall submit to the Governor and the General Assembly a single, unified recommended budget for the continued operation and expansion of the programs in the Center for School Leadership Development.

(12c) The Board of Governors may create one airport authority to support the missions of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be the county in which the the airport may be established under G.S. 116-271(c). Article 33 of this Chapter provides for such authorities.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to

the President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3; 1997-221, s. 12(b); 1997-240, s. 3; 1998-212, s. 11.12(a); 1999-84, s. 19; 2001-424, s. 31.4(b); 2005-276, s. 9.34(b); 2006-66, s. 9.17(a); 2006-95, s. 2.2; 2006-203, s. 40; 2007-154, s. 3(a); 2008-107, s. 9.8; 2008-204, s. 4.1.)

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

For provisions describing the purposes and goals of the Excellent Schools Act, Session Laws 1997-221, s. 2, see Editor's note following G.S. 115C-105.38A. For authority to use excess funds under the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, to meet increased costs of capital facilities located at the same institution, see the Editor's Note at G.S. 116D-6.

Transfer of Credits. — Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provide for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

Session Laws 1995 (Reg. Sess., 1996), c. 625, provides that the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina, shall develop a timetable for development of guidelines and report to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997, and shall review policies and make any necessary changes by September 1, 1997.

Model Teacher Consortium. — Session Laws 1998-212, s. 11.12(c), provides that the Model Teacher Consortium funded in the Department of Public Instruction and its related budget, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Model Teacher Consortium are transferred from the Department of Public Instruction to the Board of Governors of The University of North Carolina effective January 1, 1999. The Board of Governors shall coordinate the program within the UNC Center for School Leadership Development.

Session Laws 1998-212, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5, contains a severability clause.

Session Laws 2000-67, s. 10.7, directs that of the funds appropriated to the Board of Governors of the University of North Carolina for the 2000-2001 fiscal year, the sum of $1,3000,000 is allocated to restore the model teacher consortium program to the 21 counties that were part of the program in 1998-99 and to add 8 additional counties.

Session Laws 2000-67, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2000'."

Session Laws 2000-67, s. 28.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2000-2001 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2000-2001 fiscal year."

Session Laws 2000-67, s. 28.4, contains a severability clause.

Teacher Education for Military Person-

nel. — Session Laws 2001-146, s. 1, provides: "The Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Department of Public Instruction shall work cooperatively to expand the opportunities for military personnel to enroll in and complete teacher education programs prior to discharge from the military. The cooperative effort shall include the expansion, as feasible, of teacher education classes and programs on military bases and at alternate nearby sites, through Internet-based course offerings, and through cooperative education programs. The cooperative effort shall also focus on the educational needs unique to active military personnel who are potential teachers or teacher assistants and ways to make the necessary classes and programs more accessible to them. A special effort shall also be made to communicate with and inform military personnel of the educational opportunities available on military bases, at alternate sites near military bases, through long-distance education, and through cooperative education."

Professional Development for Public School Professionals. — Session Laws 2001-424, s. 31.4(c)-(e), as amended by Session Laws 2002-126, s. 7.17(h), provides: "(c) The Joint Legislative Education Oversight Committee shall hire an independent consultant to study and make recommendations regarding professional development for public school professionals in North Carolina. The consultant shall study:

"(1) The professional development programs administered under the UNC Center for School Leadership Development with regard to their mission, governance structure, efficiency, and objectively measurable effectiveness in increasing student achievement.

"(2) The feasibility and merits of consolidating and reducing the number of professional development programs.

"(3) The possibility of regionalizing professional development programs and using a cooperative arrangement between higher educational institutions and community colleges in a region to achieve the goal.

"(4) The professional development support offered by the Department of Public Instruction.

"(5) The use of professional development funds allocated to local school administrative units and individual schools.

"(6) National research regarding effective methods for delivering professional development that is shown to improve student achievement.

"The consultant shall report these findings to the Joint Legislative Education Oversight Committee and also shall make recommendations regarding how existing State funds should be utilized to provide effective and efficient professional development for public school professionals.

"(d) The Joint Legislative Education Oversight Committee shall review the consultant's findings and recommendations and shall submit to the 2003 General Assembly recommendations to streamline, reorganize, and improve the delivery of professional development for public school professionals. The recommendations may address revisions to program governance and mission, reallocation of funds, methods of program delivery, and methods to institute ongoing program evaluation.

"(e) The Joint Legislative Education Oversight Committee shall review the reports that are required to be made to the Committee. The purpose of the review is to determine which reports must include information that is research-based, proven in practice, and designed for data-driven research. The Committee may make recommendations for changes in these reports based upon the Committee's findings."

Distance Education. — Session Laws 2001-424, s. 31.7, provides: "(a) It is the intent of the General Assembly to make teacher education programs easily accessible statewide through distance education. The General Assembly finds that the '2 + 2' program is an excellent model for teacher credential programs and encourages its use as a model.

"(b) To achieve the goal of encouraging the '2 + 2' program as a model for teacher education programs and to make those model teacher education programs available and easily accessible statewide, any teacher education program that is offered by a constituent institution through distance education that does not require campus residency is eligible for funds appropriated by this act [Session Laws 2001-424] for that purpose. The Board of Governors shall determine the eligibility of a constituent institution pursuant to this section [s. 31.7 of Session Laws 2001-424]. The Board of Governors shall also determine the amount of funds to be allocated to each eligible constituent institution based on the number of student credit hours taught in teacher preparation courses through distance education at that institution and shall distribute those funds to the institution. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee annually regarding the implementation of this section [s. 31.7 of Session Laws 2001-424] and the amount and use of the funds allocated pursuant to this section [s. 31.7 of Session Laws 2001-424]."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.5 is a severability clause.

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, s. 9.3, provides for the development and implementation of a Joint Initiative for Teacher Education and Recruitment. See note at G.S. 115C-295.

Trans-fatty acids prohibited. — Session Laws 2005-276, s. 9.28(a), (b), provide: "(a) For nutritional purposes, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt policies governing any food programs operated by the constituent institutions or local community colleges that prohibit: (i) the use of cooking oils in those food programs that contain trans-fatty acids, or (ii) the sale of processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

"(b) The policies adopted in compliance with this section shall be implemented internally by August 1, 2006, and shall apply to all contracts entered into or renewed on or after that date."

Editor's Note. — At the direction of the Revisor of Statutes, Session Laws 1993 (Reg. Sess., 1994, c. 677, s. 14 has been codified as the last two sentences in (10a).

Session Laws 1997-221, s. 32, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action."

Session Laws, 1997-240, s. 3, except for the last sentence thereof, was codified as subsection (8a) of this section at the direction of the Revisor of Statutes.

Session Laws 2002-126, s. 9.9, provides: "The Board of Governors of the University of North Carolina may allow Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University each to allocate up to one hundred seventy-eight thousand three hundred eighty dollars ($178,380) of the funds allocated to them for focused enrollment growth for a maximum of 20 Prospective Teacher Scholars. These funds may be used to recruit new nonresident students to enter into agreements to: (i) pursue a full-time course of study that will lead to teacher certification in North Carolina and (ii) teach in a North Carolina public school or a school operated by the United States government in North Carolina for one year for each year that they receive this benefit. The Board of Governors shall establish guidelines and regulations for this pilot program, including methodology for determining its success in increasing the supply of qualified teachers for North Carolina public schools. The Board shall report its guidelines and regulations to guide these pilot programs to the Joint Legislative Education Oversight Committee by November 15, 2002. The Board shall report annually to the Committee on the progress of the pilot programs and their costs."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2005-276, s. 9.10(a), (b), as amended by Session Laws 2006-66, s. 9.10(b), provides: "(a) The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of five thousand dollars ($5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and MCAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. An extension of the seven-year period for satisfaction of the service requirements of the scholarship loan may be granted subject to the approval of the State Education Assistance Authority. Such extenuating circumstances may include, but not be limited to, participation in a medical residency program. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

"(b) Any medical scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-107, s. 5.3(a), provides: "(a) The Board of Governors of The University of North Carolina may establish a multidisciplinary, interinstitutional, basic and applied research program that applies state-of-the-art concepts and technologies to address disaster research questions and to assist the campuses within The University of North Carolina to develop crisis management and crisis communications systems that will help individual campuses to better prepare in the event of a disaster."

Session Laws 2007-107, s. 5.3(b), provides: "(b) The University of North Carolina may study the emission and transport of pollutants at fires at commercial hazardous waste facilities, as defined in G.S. 130A-295.01, and may study the human health and economic impacts of fires at commercial hazardous waste facilities."

Session Laws 2007-154, provides in its preamble: "Whereas, American Sign Language is a fully developed, autonomous, natural language with a unique grammar, syntax, vocabulary, and cultural heritage; and

"Whereas, the gestures, visual components, and structures of American Sign Language are neither derived from English nor a simplified version of English; and

"Whereas, American Sign Language is the predominant language most commonly used by the deaf community in the United States; and

"Whereas, there is increasing acceptance of American Sign Language as a foreign language taught in the public schools in the United States; and

"Whereas, 33 states currently have legislation recognizing American Sign Language as a foreign language; and

"Whereas, there is an increased acceptance of American Sign Language as a foreign language among foreign language faculty at colleges and universities; Now, therefore,"

Session Laws 2007-154, s. 3(b), provides: "The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by October 1, 2007, on the implementation of this section [which added subdivision (4b)]."

Session Laws 2008-107, s. 9.7(c), provides: "The University of North Carolina and Community Colleges System Office shall report by September 1, 2008, and annually thereafter, to the Joint Legislative Education Oversight Commission, the State Board of Education, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

"(1) The courses and programs within the 2+2 E-Learning Initiative;

"(2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;

"(3) The total number of teachers currently in the State's classrooms, by local school administrative unit, who have taken part in this initiative;

"(4) The change in the number of teachers available to schools since the program's inception;

"(5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and

"(6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 40, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium therefter, deleted "the Advisory Budget Commission" following "the General Assembly" near the end of the third sentence in subdivision (1); in subdivision (9), rewrote sub-subdivision a., and deleted the last sentence in sub-subdivision b. and c., which read "Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission"; and in subdivision (12), deleted "the Advisory Budget Commission" following "the General Assembly."

Session Laws 2008-107, s. 9.8, effective July 1, 2008, added subdivision (9)a1.

Session Laws 2008-204, s. 4.1, effective August 8, 2008, added subdivision (12c).

Legal Periodicals. — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For 1984 survey, "The Rights of University Faculty to Their Inventive Ideas," see 63 N.C.L. Rev. 1248 (1985).

CASE NOTES

Powers of planning and coordination of a system of higher education in North Carolina, granted to the Board in a number of subsections of this section, each of which deals with a specific power, are expressly relative to the Board's governance of the constituent institutions of The University of North Carolina. Nova Univ. v. Board of Governors, 305 N.C. 156, 287 S.E.2d 872 (1982).

Board of Governors' Power to Control Campuses. — Delegation of Board's power to campuses does not deprive the Board of control over campuses' activity with which the delegation is connected. Instead, the statute provides that "any delegation of authority may be rescinded by the Board at any time in whole or in part." The statute also provides that the chancellor of each campus acts "subject to the direction of the President." Regardless of any authority that the Board of Governors may have delegated to the constituent campuses of UNC, the Board retains ultimate control over the campuses' activity through its unlimited power to rescind any delegation. Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990), cert. denied, 500 U.S. 916, 111 S. Ct. 2013, 114 L. Ed. 2d 100 (1991).

Individual campuses enjoy a substantial measure of autonomy; they operate largely free from control of the Board of Governors. On a day-to-day basis, operations of campuses are determined primarily by their respective chancellors and boards of trustees. This is true, however, because of the independence that the board has allowed the campuses, and not because of any autonomy with which they are inherently endowed under the relevant statutes. Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990), cert. denied, 500 U.S. 916, 111 S. Ct. 2013, 114 L. Ed. 2d 100 (1991).

Open Meetings Law Inapplicable. — Since the board of governors of The University of North Carolina has no governmental powers, i.e., no powers peculiar to the sovereign, the board of governors is not, itself, a "governmental body of this State," and the former Open Meetings Law, G.S. 143-318.2 (see now G.S. 143-318.9 et seq.), does not extend to the meetings of its employees, even though such employees be deemed a "component part" of the board of governors. Student Bar Ass'n Bd. of Governors v. Byrd, 293 N.C. 594, 239 S.E.2d 415 (1977).

Applied in Speck v. North Carolina Dairy Found., Inc., 311 N.C. 679, 319 S.E.2d 139 (1984).

Cited in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977); Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979); Sack v. N.C. State Univ., 155 N.C. App. 484, 574 S.E.2d 120, 2002 N.C. App. LEXIS 1610 (2002).

OPINIONS OF ATTORNEY GENERAL

TACIT Program Not Violative of G.S. 66-58. — The TACIT Program, offered by North Carolina State University's Department of Urban Affairs to units of local government to educate employees with respect to selecting appropriate computer equipment, does not violate the provisions of G.S. 66-58. See opinion of Attorney General to Mr. George E. Tatum, Register of Deeds, Cumberland County, 55 N.C.A.G. 101 (1986).

§ 116-11.1: Transferred to G.S. 116-37 by Session Laws 1971, c. 1244, s. 6.

§ 116-11.2. Duties regarding programs in education administration.

The Board of Governors shall direct the constituent institutions with programs in education administration to revise the programs to reflect any increased standards required for programs approved by the State Board of Education, including new requirements for school-based leadership in the public schools. The Board of Governors shall monitor the programs and devise an assessment plan for all programs leading to certification in education administration. (1991, c. 689, s. 200(e).)

§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. All property of whatsoever kind and all rights and privileges held by the Board of Trustees of the North Carolina School of Science and Mathematics, as said property, rights and privileges may exist immediately prior to July 1, 2007, shall be and hereby are, effective July 1, 2007, transferred to and vested in the Board of Governors of The University of North Carolina. All obligations of whatsoever kind of the Board of Trustees of the North Carolina School of Science and Mathematics as said obligations may exist immediately prior to July 1, 2007, shall be, and the same hereby are, effective July 1, 2007, transferred to and assumed by the Board of Governors of The University of North Carolina. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4; 2006-66, s. 9.11(c); 2008-192, s. 4.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — Session Laws 2008-192, s. 4, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" twice in the section.

§ 116-13. Powers of Board regarding property and services subject to general law.

(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

(1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or

(2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of Administration, the State Purchasing Officer, or the Board of Awards shall not be required, regardless of dollar value.

(b) Special responsibility constituent institutions shall have the authority to purchase equipment, materials, supplies, and services from sources other than those certified by the Secretary of Administration on term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;

(2) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts;

(3) The cost of the purchase shall not exceed the benchmark established under G.S. 116-31.10; and

(4) The special responsibility constituent institution notifies the Department of Administration of purchases consistently being made under this provision so that State term contracts may be improved. (1971, c. 1244, s. 1; 2003-228, s. 1.)

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-13.1. Capital facilities; reports.

(a) The General Assembly finds that although The University of North Carolina is one of the State's most valuable assets, the current facilities of the University have been allowed to deteriorate due to decades of neglect and have unfortunately fallen into a state of disrepair because of inadequate attention to maintenance. It is the intent of the General Assembly to reverse this trend and to provide a mechanism to assure that the University's capital assets are adequately maintained. The General Assembly commits to responsible stewardship of these assets to protect their value over the years, as follows:

(1) The Board of Governors of The University of North Carolina shall require each constituent and affiliated institution to monitor the condition of its facilities and their needs or repair and renovation, and to assure that all necessary maintenance is carried out within funds available.

(2) The Board of Governors shall report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee on the condition of the University's capital facilities, the repair, renovation, and maintenance projects being undertaken, and all needs for additional funding to maintain the facilities.

(3) It is the intent of the General Assembly to assure that adequate oversight, funding, and accountability are continually provided so that the capital facilities of the University are properly maintained to preserve the level of excellence the citizens of this State deserve. To this end, the Joint Legislative Education Oversight Committee shall report to the General Assembly annually its recommendations for legislative changes to implement this policy.

(b) Equity in University Improvements. — The Board of Governors of The University of North Carolina shall continue to study and monitor any inequities in funding for capital improvements and facilities needs which may still exist on North Carolina's Public Historically Black Colleges and Universities and North Carolina's Historically American Indian University, the University of North Carolina at Pembroke, beyond the funding of the projects provided for in this act, and shall report annually to the Joint Legislative Commission on Governmental Operations on any remaining inequities found, including recommendations as to how those inequities should be addressed. (2000-3, ss. 1.1, 8; 2005-153, s. 2.)

Editor's Note. — Session Laws 2000-3, s. 6, had duplicate text with Session Laws 2000-3, s. 1.1(2) (subdivision (a)(2) of this section as codified) and has not been set out above.

The preamble to Session Laws 2005-153, provides: "Whereas, the University of North Carolina at Pembroke was originally established in 1887 as Croatan Normal School in response to a petition from the American Indian people in the Robeson County area; and

"Whereas, the General Assembly changed the name in 1911 to the Indian Normal School of Robeson County and again in 1913 to the Cherokee Indian Normal School of Robeson County; and

"Whereas, in 1926, the Board of Trustees added a two-year normal program beyond high school, and phased out elementary education; and

"Whereas, the first 10 diplomas were awarded in 1928, when the State accredited the school as a 'standard normal school', and additional college courses were later added with the first college degrees conferred in 1940; and

"Whereas, in 1941, the General Assembly changed the name to Pembroke State College for Indians, and the school's curricula further expanded; and

"Whereas, in 1945, enrollment was further expanded to include American Indians from other tribes, and in 1949 the name was shortened to Pembroke State College; and

"Whereas, in the wake of the 1950s and 1960s civil rights and school desegregation laws, the General Assembly changed the name in 1969 to Pembroke State University and made the school a regional university; and

"Whereas, three years later, in 1972, the General Assembly established the 16-campus University of North Carolina System, with Pembroke State University as one of its constituent institutions; and

"Whereas, on July 1, 1996, Pembroke State University officially became the University of North Carolina at Pembroke; and

"Whereas, The University of North Carolina System currently consists of 16 university campuses, five of which are designated as Historically Black Colleges and Universities, but the University of North Carolina at Pembroke has never been officially acknowledged as a Historically American Indian University; Now, therefore, The General Assembly of North Carolina enacts:"

§ 116-13.2. Report on University Fiscal Liabilities.

The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on:

(1) Any financing of buildings or other facilities, regardless of the ownership of those buildings or other facilities, located on land owned by The University of North Carolina or the constituent institutions of The University of North Carolina; and

(2) All fiscal liabilities or contingent liabilities, including payments for debt service or other contractual arrangements, of The University of North Carolina or any constituent institution. (2002-126, s. 9.16.)

§ 116-14. President and staff.

(a) The Board shall elect a President of the University of North Carolina. The President shall be the chief administrative officer of the University.

(b) The President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Article, who shall be elected by the Board on nomination of the President. The Board shall fix the compensation of the staff members it elects. These staff members shall include a senior vice-president and such other vice-presidents and officers as may be deemed desirable. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the Board. In addition, the President shall be assisted by such other employees as may be needed to carry out the provisions of this Article, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the Board on recommendation of the President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. Subject to approval by the Board, the President may establish and abolish employment positions within the staff complement authorized by this subsection in the manner of and under the conditions prescribed by G.S. 116-30.4 for special responsibility constituent institutions.

(b1) The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16010 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16010 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16010, and the capital improvement projects may be established following the procedures set out in G.S. 143C-8-8 and G.S. 143C-8-9.

(b2) The President, in consultation with the State Auditor and the Director of the Office of State Personnel, shall ascertain that the management staff and internal financial controls are in place and continue in place to successfully administer the additional authority authorized under G.S. 116-14(b1) and G.S. 116-30.3(e). All actions taken by the President pursuant to G.S. 116-14(b1) and G.S. 116-30.3(e) are subject to audit by the State Auditor.

(c) The President, with the approval of the Board, shall appoint an advisory committee composed of representative presidents of the private colleges and universities and may appoint such additional advisory committees as are deemed necessary or desirable. (1971, c. 1244, s. 1; 1999-237, s. 10.14(b); 2000-140, s. 26; 2006-203, s. 41; 2007-117, s. 1.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 41, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (b1), substituted "Budget Code 16011" for "Budget Code 16010" twice, and substituted "G.S. 143C-8-8 and G.S. 143C-8-9" for "G.S. 143-18.1" at the end.

CASE NOTES

Applied in Uzzell v. Friday, 592 F. Supp. 1502 (M.D.N.C. 1984).

Cited in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977); Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990).

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

(a1) The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible through higher education and in consonance with statutory law of this State making unlawful any "unfair or deceptive acts or practices in the conduct of any trade or commerce," hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a2) Definitions. — As used in this section the following terms are defined as set forth in this subsection:

(1) "Post-secondary degree". — A credential conferring on the recipient thereof the title of "Associate", "Bachelor", "Master", or "Doctor", or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that "post-secondary degree" shall not include any honorary degree or other so-called "unearned" degree.

(2) "Institution". — Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.

(3) "Post-secondary degree activity". — Any of the following is "post-secondary degree activity":

a. Awarding a post-secondary degree.

b. Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.

(4) "Publicly registered name". — The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.

(5) "Board". — The Board of Governors of The University of North Carolina.

(b) Required License. — No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. — Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution's names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. — Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Military. — To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure. — To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

(1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;

(2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;

(3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;

(4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;

(5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;

(6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing offered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of study, equivalent experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;

(7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;

(8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;

(9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;

(10) That the institution is financially sound and capable of fulfilling its commitments to students and that the institution has provided a bond as provided in subsection (f1) of this section;

(11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

(12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;

(13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;

(14) That the institution has a fair and equitable cancellation and refund policy; and

(15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.

(f1)(1) A guaranty bond is required for each institution that is licensed. The Board may revoke the license of an institution that fails to maintain a bond pursuant to this subsection.

If the institution has provided a bond pursuant to G.S. 115D-95, the Board may waive the bond requirement under this subsection. The Board may not waive the bond requirement under this subsection if the applicant has provided an alternative to a guaranty bond under G.S. 115D-95(c).

(2) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the institution will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the institution to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of an institution's license, bankruptcy, foreclosure, or the institution ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for an institution shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the institution. The bond amount shall also be at least ten thousand dollars ($10,000).

Each application for a license shall include a letter signed by an authorized representative of the institution showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(g) Review of Licensure. — Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) Denial and Revocation of Licensure. — Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license to conduct post-secondary degree activity in this State. Any institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) Regulatory Authority in the Board. — The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) Enforcement Authority in the Attorney General. — The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) Severability. — The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268; 1977, c. 563, ss. 1-4; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983 (Reg. Sess., 1984), c. 1006; 1989 (Reg. Sess., 1990), c. 824, s. 2; 1997-456, s. 27.)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b); Cabarrus Memorial Hospital (known as Northeast Medical Center after July 1, 2007): 1998-204, as amended by 2004-67, as amended by 2007-113, s. 1(a), as amended by 2007-484, s. 41.

Editor's Note. — The first paragraph of this section and subsection (a) of this section were renumbered as subsections (a1) and (a2) pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Chapter 115, referred to in the introductory paragraph, was rewritten by Session Laws 1981, c. 423, s. 1, and has been recodified as Chapter 115C.

Legal Periodicals. — For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

This section expressly authorizes the Board to license only the conferral of degrees, and not teaching. Nova Univ. v. Board of Governors, 305 N.C. 156, 287 S.E.2d 872 (1982).

Inherent in the power to license degrees is the power to establish minimum criteria which a North Carolina institution must meet in order to be licensed to grant degrees, and this is sufficient power for the Board to ensure that degrees conferred by North Carolina institutions are backed by curricula meeting the minimum standards of quality prescribed by the Board's regulations. Nova Univ. v. Board of Governors, 305 N.C. 156, 287 S.E.2d 872 (1982).

Board Has No Authority to Regulate Out-of-State University. — This section does not authorize the Board of Governors of The University of North Carolina to regulate through a licensing procedure teaching in North Carolina by an out-of-state university when the teaching leads to conferral of academic degrees in Florida and pursuant to Florida law. Nova Univ. v. Board of Governors, 305 N.C. 156, 287 S.E.2d 872 (1982).

OPINIONS OF ATTORNEY GENERAL

Review in Less Than Mandatory Six-Year Review Period. — An institution, duly licensed pursuant to this section prior to its 1984 amendment, and falling within the six-year mandatory review exception to the amendment, is subject to review by the board of governors for licensure renewal in less than the mandatory six-year review period. See opinion of Attorney General to Mr. Richard Robinson, Assistant to the President, The University of North Carolina, 56 N.C.A.G. 1 (1986).

§ 116-16. Tax exemption.

The lands and other property belonging to the University of North Carolina shall be exempt from all kinds of public taxation. (Const., art. 5, s. 5; 1789, c. 306, s. 3; P.R.; R.S., vol. 2, p. 428; Code, s. 2614; Rev., s. 4262; C.S., s. 5783; 1971, c. 1244, s. 2.)

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

For note on the rejection of the "public purpose" requirement for state tax exemption, see 17 Wake Forest L. Rev. 293 (1981).

CASE NOTES

Applied in In re North Carolina Forestry Found., Inc., 35 N.C. App. 414, 242 S.E.2d 492 (1978); In re North Carolina Forestry Found., Inc., 296 N.C. 330, 250 S.E.2d 236 (1979).

Cited in In re North Carolina Forestry Found., Inc., 35 N.C. App. 430, 242 S.E.2d 502 (1978); Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees.

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges, constituent institutions, and other institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, colleges, constituent institutions, and other institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions and on forms prepared by said governing boards. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees. (1965, c. 365; 1971, c. 1244, s. 3; 1989, c. 526, s. 3; 2006-66, s. 9.11(d).)

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Institution Determines Seller of Annuity or Retirement Income Contract Under This Statute. — See opinion of Attorney General to Mr. H.L. Ferguson, Jr., University of North Carolina at Greensboro, 42 N.C.A.G. 6 (1972).

§ 116-17.1. Dependent care assistance program.

The Board of Governors of The University of North Carolina is authorized to provide eligible employees of constituent institutions a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Board of Governors may authorize constituent institutions to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, it may select a contractor only upon a thorough and completely competitive procurement process. (1989, c. 458, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(d); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

§ 116-17.2. Flexible Compensation Plan.

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of The University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Board of Governors may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1989 (Reg. Sess., 1990), c. 1059, s. 3; 1991 (Reg. Sess., 1992), c. 1044, s. 14(h); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a).)

Cross References. — For flexible compensation plan for eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of this section, see G.S. 126-95.

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1989 (Reg. Sess., 1990), c. 1059, s. 3 having been 116-17.1.

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Voluntary Indemnity Plan. — The statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees) and the Statewide Flexible Benefits Program permit the Statewide Flexible Benefits Program to offer a voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits. See opinion of Attorney General to Mr. Carl Goodwin, Director, Risk Control Services, Office of State Personnel, 2001 N.C. AG LEXIS 40 (10/3/01).

The University of North Carolina, or some of its campuses, may not offer a cafeteria plan which allows pre-tax premiums for dependent health coverage as such competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits. See opinion of Attorney General to Leslie Winner, Vice President and General Counsel, University of North Carolina, 2002 N.C. AG LEXIS 15 (3/26/02).

§ 116-18. Information Center established.

The Board of Governors of the University of North Carolina, with the cooperation of other concerned organizations, shall establish, as a function of the Board, an Educational Opportunities Information Center to provide information and assistance to prospective college and university students and to the several institutions, both public and private, on matters regarding student admissions, transfers and enrollments. The public institutions shall cooperate with the Center by furnishing such nonconfidential information as may assist the Center in the performance of its duties. Similar cooperation shall be requested of the private institutions in the State.

An applicant for admission to an institution who is not offered admission may request that the institution send to the Center appropriate nonconfidential information concerning his application. The Center may, at its discretion and with permission of the applicant, direct the attention of the applicant to other institutions and the attention of other institutions to the applicant. The Center is authorized to conduct such studies and analyses of admissions, transfers and enrollments as may be deemed appropriate. (1971, c. 1086, s. 1; c. 1244, s. 4.)

§ 116-19. Contracts with private institutions to aid North Carolina students and licensure students; reporting requirement.

(a) In order to encourage and assist private institutions to continue to educate North Carolina students and licensure students, the State Education Assistance Authority may enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the State Education Assistance Authority would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated. For purposes of this subsection, “needy North Carolina students and licensure students” are those eligible students and licensure students who have financial need as determined by the institution under the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. For purposes of this subsection, “institutional methodology” means a need-analysis formula, developed by College Scholarship Service, that determines the student's or licensure student's and his or her family's capacity to pay for postsecondary education each year.

(b) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students and full-time and less than full-time licensure students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students and licensure students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program. (1971, c. 744, s. 1; c. 1244, s. 5; 1993, c. 321, s. 80(d); 2001-424, s. 31.1(b); 2002-69, s. 1; 2006-66, s. 9.13(a).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

§ 116-20. Scholarship and contract terms; base period.

In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1997, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students and licensure students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students and licensure students may also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section. (1971, c. 744, s. 2; c. 1244, s. 5; 1998-212, s. 11.10; 2006-66, s. 9.13(b).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

§ 116-21. Contract forms; reports; audits; regulations.

The State Education Assistance Authority may prescribe the form of the contracts to be executed under G.S. 116-19 and 116-20, to require of the institutions such reports, statements and audits as the Authority may deem necessary or desirable in carrying out the purposes of G.S. 116-19 through 116-22 and to adopt rules that will, in the opinion of the Authority, help to achieve the purposes of G.S. 116-19 through 116-22. (1971, c. 744, s. 3; c. 1244, s. 5; 1993, c. 321, s. 80(e).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students, see the Editor's Note under G.S. 116-19.

§ 116-21.1. Financial aid for North Carolina students and licensure students attending private institutions of higher education in North Carolina.

(a) Funds shall be appropriated each fiscal year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for aid to institutions and shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22.

(b) The funds appropriated in compliance with this section shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in the account shall be provided as scholarship funds for needy North Carolina students and licensure students during the fiscal year. Each student and licensure student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in G.S. 116-21.2. (2001-424, s. 31.1(a); 2006-66, s. 9.13(c).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) Grants for Students. — In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the undergraduate student as provided by this subsection. A full-time North Carolina undergraduate student shall be awarded the full amount of the tuition grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least nine hours of academic credit per semester shall be awarded a tuition grant in an amount that is calculated on a pro rata basis.

(a1) Grants for Licensure Students. — The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any part-time licensure student who is enrolled to take at least nine hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(b) Administration of Grants. — The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Student or Licensure Student Change of Status; Audits. — In the event a full-time student on whose behalf a grant has been paid in accordance with subsection (a) of this section or a full-time licensure student on whose behalf a grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a part-time student on whose behalf a prorated grant has been paid in accordance with subsection (a) of this section or a part-time licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load of nine credit hours per semester in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If the matriculated status of a full-time student or a full-time licensure student changes to a matriculated status of part-time student or part-time licensure student by the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund only the difference between the amount of the full-time grant awarded and the amount of the part-time grant that is awarded pursuant to this section. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) Shortfall. — In the event there are not sufficient funds to provide each eligible student or licensure student with a full or prorated grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and

(2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Reversions. — Any remaining funds shall revert to the General Fund. (2001-424, s. 31.1(a); 2006-66, s. 9.13(d); 2007-323, s. 9.13(a); 2008-107, s. 9.11(a); 2009-451, s. 9.8(a).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 9.11(a), effective July 1, 2008, and applicable to academic semesters beginning on or after July 1, 2008, substituted "six" for "nine" preceding "hours" in subsections (a) and (a1), and substituted "six" for "nine" preceding "credit hours" in subsection (c).

Session Laws 2009-451, s. 9.8(a), effective July 1, 2009, and applicable to academic semesters beginning on or after that date, substituted "nine hours" for "six hours" in subsections (a) and (a1); in subsection (c), substituted "nine credit hours" for "six credit hours.".

§ 116-21.3. Legislative tuition grant limitations.

(a) For purposes of this section, an "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) No legislative tuition grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

(c) Any member of the armed services, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time undergraduate student or as a licensure student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

(d) A legislative tuition grant authorized under G.S. 116-21.2(a) shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours. (2001-424, s. 31.1(a); 2006-66, s. 9.13(e).)

Editor's Note. — Session Laws 2003-300, s. 6(b), provides: "Legislative Tuition Grants. — Students who are receiving the North Carolina Legislative Tuition Grant who lose their full-time student status due to a call to active military duty or circumstances related to national emergencies shall not be required to repay the Legislative Tuition Grant for that semester. The North Carolina State Education Assistance Authority shall implement this subsection."

§ 116-21.4. Limitations on expenditures.

(a) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 may be used only for secular educational purposes at nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22.

(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student or licensure student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years. (2001-424, s. 31.1(a); 2002-126, s. 9.6; 2006-66, s. 9.13(f).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

§ 116-21.5: Repealed by Session Laws 2009-451, s. 9.15(a), effective July 1, 2009.

Editor's Note. — Former G.S. 116-21.5, Private medical schools — assistance funding formula, was enacted by Session Laws 2001-424, s. 31.3.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 116-21.6. Private medical schools — medical student grants.

(a) Funding for Medical Student Grants. — Funds shall be appropriated each year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina to provide grants to medical students who are North Carolina residents and who enroll in and attend medical school at either Duke University or Wake Forest University.

(b) Student Eligibility for Grants. — In addition to all other financial assistance made available to medical students who are attending medical school at either Duke University or Wake Forest University, there is awarded to each medical student who is a North Carolina resident and who is enrolled in and attending medical school at either Duke University or Wake Forest University a grant of five thousand dollars ($5,000) for each academic year, which shall be disbursed as provided by this section.

(c) Administration of Grants. — The grants provided for in this section shall be administered by the Board of Governors pursuant to rules adopted by the Board of Governors not inconsistent with this section. The Board of Governors shall not approve any grant until it receives proper certification from the appropriate medical school that the student applying for the grant is eligible. Upon receipt of the certification, the Board of Governors shall remit at the times as it prescribes the grant to the medical school on behalf, and to the credit, of the medical student.

The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these grants. The Board of Governors also shall make any rules as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board of Governors shall encourage the two medical schools to orient students toward primary care, consistent with the directives of G.S. 143-613(a). The two schools shall supply information necessary for the Board to comply with G.S. 143-613(d).

(d) Medical Student Change of Status. — In the event a medical student on whose behalf a grant has been paid in accordance with this section terminates his or her enrollment in medical school, the medical school shall refund the full amount of the grant to the Board of Governors.

(e) Authority to Transfer Funds if Appropriation Insufficient. — If the funds appropriated in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for grants to students who are eligible for a grant under this section are insufficient to cover the enrolled students in accordance with this section, then the Board of Governors may transfer unused funds from other programs in the Related Educational Programs budget code to cover the extra students.

(f) Reversions. — Any remaining funds shall revert to the General Fund.

(g) Document Number of Medical School Graduates Who Remain in North Carolina. — The Board of Governors shall encourage Duke University School of Medicine and Wake Forest University School of Medicine to document the number of graduates each year who either enter residencies or locate their practices in North Carolina and to report that information annually to the Board of Governors. The Board of Governors shall report annually to the Joint Legislative Education Oversight Committee regarding the information received from the two medical schools pursuant to this subsection. (2009-451, s. 9.15(b).)

Editor's Note. — Session Laws 2009-451, s. 28.6, made this section effective July 1, 2009.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 116-22. Definitions applicable to §§ 116-19 to 116-22.

As used in G.S. 116-19 through 116-22:

(1) "Institution" shall mean an educational institution with a main permanent campus located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof that satisfies all of the following:
  a. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association or by the New England Association of Schools and Colleges through its Commission on Institutions of Higher Education.
  b. Awards a postsecondary degree as defined in G.S. 116-15.
  c. Is not a seminary, Bible school, Bible college or similar religious institution.

(1a) "Licensure student" shall mean a person who:
  a. Has a bachelors degree;
  b. Is enrolled either full-time or less than full-time in a program intended to result in licensure in teaching or nursing;
  c. Attends an institution located in the State; and
  d. Qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board.

(1b) "Main permanent campus" shall mean a campus owned by the institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary degree activity as defined in G.S. 116-15.

(2) "Student" shall mean a person enrolled in and attending an institution located in the State who qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures required by G.S. 116-19 through 116-22 shall be the number of full-time equivalent students as computed under regulations prescribed by the Board of Governors

of the University of North Carolina. Qualification for in-State tuition under G.S. 116-143.3 makes a person a "student" as defined in this subdivision. (1971, c. 744, s. 4; c. 1244, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 59; 1987, c. 830, s. 93(d); 2002-126, s. 9.11(a); 2002-159, s. 38; 2006-66, s. 9.13(g).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students, see the Editor's Note under G.S. 116-19.

Editor's Note. — Session Laws 2002-126, s. 9.11(b), provides: "Notwithstanding the provisions of G.S. 116-22 as enacted by this section, any institution that met the definition of "institution" under G.S. 116-22 on January 1, 2001, shall continue to be eligible to receive funds appropriated in compliance with G.S. 116-19 through G.S. 116-22 when this act becomes law, if it received funds for these purposes as of January 1, 2001.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§§ 116-22.1 through 116-25: Transferred to G.S. 116A-3 to 116A-7 by Session Laws 1971, c. 1135, s. 2.

Editor's Note. — Chapter 116A was repealed by Session Laws 1979, 2nd Session, c. 1311. See now Chapter 116B.

§ 116-26: Transferred to G.S. 116-43 by Session Laws 1971, c. 1244, s. 17.

§ 116-27: Repealed by Session Laws 1971, c. 1244, s. 1.

§§ 116-28, 116-29: Repealed by Session Laws 1963, c. 448, s. 7.

§ 116-29.1. University Cancer Research Fund.

(a) Fund. — The University Cancer Research Fund is established as a special revenue fund in the Office of the President of The University of North Carolina. Allocations from the fund shall be made in the discretion of the Cancer Research Fund Committee and shall be used only for the purpose of cancer research under UNC Hospitals, the Lineberger Comprehensive Cancer Center, or both.

(b) The General Assembly finds that it is imperative that the State provide a minimum of fifty million dollars ($50,000,000) each calendar year to the University Cancer Research Fund; therefore, effective July 1 of each calendar year:

(1) Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust Account, the sum of eight million dollars ($8,000,000) is transferred from the Tobacco Trust Account to the University Cancer Research Fund and appropriated for this purpose.

(2) The funds remitted to the University Cancer Research Fund by the Secretary of Revenue from the tax on tobacco products other than

cigarettes pursuant to G.S. 105-113.40A is appropriated for this purpose.

(3) An amount equal to the difference between (i) fifty million dollars ($50,000,000) and (ii) the amounts appropriated pursuant to subdivisions (1) and (2) of this subsection is appropriated from the General Fund for this purpose.

(c) Cancer Research Fund Committee. — The Cancer Research Fund Committee shall consist of five ex officio members and two appointed members. The five ex officio members shall consist of the following: (i) one member shall be the President of The University of North Carolina, (ii) one member shall be the Director of the Lineberger Comprehensive Cancer Center, (iii) one member shall be the Dean of the School of Medicine at The University of North Carolina, (iv) one member shall be the Dean of the School of Pharmacy at The University of North Carolina, and (v) one member shall be the Dean of the School of Public Health at The University of North Carolina. The remaining two members shall be appointed by a majority vote of the standing members of the Committee and shall be selected from persons holding a leadership position in a nationally prominent cancer program.

If any of the specified positions cease to exist, then the successor position shall be deemed to be substituted in the place of the former one, and the person holding the successor position shall become an ex officio member of the Committee.

(d) Chair. — The chair shall be the President of The University of North Carolina.

(e) Quorum. — A majority of the members shall constitute a quorum for the transaction of business.

(f) Meetings. — The Committee shall meet at least once in each quarter and may hold special meetings at any time and place at the call of the chair or upon the written request of at least a majority of its members. (2007-323, s. 6.23(b); 2009-451, s. 27A.5(e).)

Editor's Note. — Session Laws 2007-323, s. 32.6, made this section effective July 1, 2007.

Session Laws 2007-323, s. 16.23(c), provides: "Notwithstanding G.S. 116-29.1(b)(3), the amount appropriated from the General Fund to the University Cancer Research Fund for the 2007-2008 fiscal year is five million six hundred thousand dollars ($5,600,000), and the amount appropriated from the General Fund to the University Cancer Research Fund for the 2008-2009 fiscal year is fifteen million five hundred thousand dollars ($15,500,000)."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 27A.5(e), effective September 1, 2009, substituted "G.S. 105-113.40A" for "G.S. 105-113.41" in subdivision (b)(2).

§ 116-29.5: Repealed by Session Laws 2009-209, s. 3, effective June 29, 2009.

§ 116-30: Transferred to G.S. 116-40 by Session Laws 1971, c. 1244, s. 9.

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.01: Recodified as G.S. 115C-296.4 by Session Laws 2006-66, s. 9.17(c), effective January 1, 2007.

Editor's Note. — Session Laws 1995, c. 324, s. 17.9(a) was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995, c. 324, s. 17.9, provides in part: "(a) The Task Force on Teacher Staff Development established by Section 141 of Chapter 321 of the 1993 Session Laws, all funds appropriated by the General Assembly for the Task Force and the Teacher Academy Program, and all resources and personnel provided for the Task Force and the Teacher Academy Program by the Department of Public Instruction are transferred from the Department of Public Instruction to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a). Where a conflict arises in connection with the transfer, the transfer shall be resolved by the Governor, and the decision of the Governor shall be final.

"The Task Force is renamed the North Carolina Teacher Academy Board of Trustees.

"(b) Subsection (g) of Section 141 of Chapter 321 of the 1993 Session Laws is repealed.

"(h) The Board of Trustees shall report on its summer programs to the Joint Legislative Education Oversight Committee prior to November 1, 1995.

"(j) This section becomes effective September 1, 1995, except that the General Assembly may make appointments pursuant to subsection (d) of this section [subsection (c) above] prior to September 1, 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 28.28(b), provides: "The State Board of Education shall specify professional development programs for teachers assigned to smaller classes in kindergarten through fifth grade. The Teacher Academy shall use at least ten percent (10%) of its budget for the 2001-2002 fiscal year to deliver these programs to teachers."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116-30.1. Special responsibility constituent institutions.

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation. These rules shall not be designed to prohibit participation by a constituent institution because of its size. These rules shall establish procedures for the President and his staff to review the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office for each special responsibility constituent institution. The President shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where significant findings are identified, the President shall notify the Chancellor of the particular special responsibility constituent institution that the institution must make satisfactory progress in resolving the findings, as determined by the President of The University, after consultation with the State Auditor, within a three-month period commencing with the date of receipt of the published financial audit report, any other audit report, or management letter. If satisfactory progress is not made within a three-month period, the President of The University shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the President of The University of North Carolina, after consultation with the State Auditor. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review by the President, after consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1996, 2nd Ex. Sess., c. 18, s. 7.4(k); 1997-71, s. 1.)

Editor's Note. — The part number, part heading and sections 116-30.1 through 116-30.5 in this Part were assigned by the Revisor of Statutes, these sections in the enacting act having been G.S. 116-44.6 through 116-44.10.

Session Laws 2003-284, s. 6.1, as amended by Session Laws 2004-124, s. 6.20, effective July 1, 2003, provides: "There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's operations. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level of service authorized by the General Assembly. If the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, then the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from the Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund.

"Funds that become available from overrealized receipts in General Fund Codes and Highway Fund Codes may be used for new permanent employee positions or to raise the salary of existing employees only as follows:

"(1) As provided in G.S. 116-30.1, 116-30.2, 116-30.3, 116-30.4; or

"(2) If the Director of the Budget finds that the new permanent employee positions are necessary to maintain the function that generated the receipts at the level anticipated in the certified budget codes for that Fund. The Director of the Budget shall notify the President Pro Tempore of the Senate, the Speakers of the House of Representatives, the Chairs of the Appropriations Committees of the Senate and the House of Representatives, and the Fiscal

Research Division of the Legislative Services Office that he intends to make such a finding at least 10 days before he makes the finding. The notification shall set out the reason the positions are necessary to maintain the function.

"The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter the General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 116-30.2. Appropriations to special responsibility constituent institutions.

(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143C-6-4 and G.S.120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143C-6-3 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

(b) Repealed by Session Laws 2006-66, s. 9.11(f), effective July 1, 2007. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8; 2001-449, s. 1; 2004-124, s. 9.6; 2006-66, ss. 9.8, 9.11(e), (f); 2006-203, s. 42.)

Editor's Note. — Session Laws 2001-424, s. 31.6(a) and (b), provides: "(a) Notwithstanding G.S. 116-30.2 or G.S. 116-30.3, neither the Office of General Administration of The University of North Carolina or any special responsibility constituent institution shall expend or use any of the following funds to modify the budget reductions imposed by this act [Session Laws 2001-424]:

"(1) General Fund moneys appropriated by this act [Session Laws 2001-424].

"(2) General Fund current operations appropriations credit balances remaining at the end of any fiscal year that are carried forward to the next fiscal year.

"(b) Except as provided in subsection (a) of this section [s. 31.6(a) of Session Laws 2001-424], G.S. 116-30.2 and G.S. 116-30.3 remain in full force and effect. "

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium. "

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 42, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the subsection (a) designation; substituted "G.S. 143C-6-4 and G.S. 120-76(8)" for "G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8)" in the second sentence; and substituted "G.S. 143C-6-3" for "G.S. 143-17" in the next-to-last sentence.

§ 116-30.3. Reversions.

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143C-6-2 shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) Repealed by Session Laws 1998-212, s. 11(b).

(c) Repealed by Session Laws 1998-212, s. 11(a).

(d) Repealed by Session Laws 1998-212, s. 11(b).

(e) Notwithstanding G.S. 143C-1-2 of the General Fund current operations appropriations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this subsection shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143C-6-2, shall establish the General Fund current operations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina. The funds shall not be used to support positions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1995, c. 507, s. 15.16; 1997-443, s. 10.19; 1998-212, s. 11(a), (b); 1999-237, s. 10.14(a); 2006-203, s. 43.)

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 31.6(a) and (b), provides: "(a) Notwithstanding G.S. 116-30.2 or G.S. 116-30.3, neither the Office of General Administration of The University of North Carolina or any special responsibility constituent institution shall expend or use any of the following funds to modify the budget reductions imposed by this act [Session Laws 2001-424]:

"(1) General Fund moneys appropriated by this act [Session Laws 2001-424].

"(2) General Fund current operations appropriations credit balances remaining at the end of any fiscal year that are carried forward to the next fiscal year.

"(b) Except as provided in subsection (a) of this section [31.6(a) of Session Laws 2001-424], G.S. 116-30.2 and G.S. 116-30.3 remain in full force and effect."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 43, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "is appropriated" for "may be used" throughout the section; substituted "G.S. 143C-6-2" for "G.S. 143-25 " in the last sentence of subsection (a) and the next-to-last sentence of subsection (e); and substituted "G.S. 143C-1-2" for "G.S. 143-18" near the beginning of subsection (e).

§ 116-30.3A. Availability of excess receipts.

Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget. Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina Health Care System realized in excess of budgeted levels shall be available above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget. (2006-203, s. 4.)

Editor's Note. — Session Laws 2006-203, s. 126, makes this section effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and to each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

§ 116-30.4. Position management.

The Chancellor of a special responsibility constituent institution, when he finds that to do so would help to maintain and advance the programs and services of the institution, may establish and abolish positions, acting in accordance with:

(1) State Personnel policies and procedures if these positions are subject to the State Personnel Act and if the institution is operating under the terms of a Performance Agreement or a Decentralization Agreement authorized under Chapter 126 of the General Statutes; or

(2) Policies and procedures of the Board of Governors if these positions are exempt from the State Personnel Act.

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel. Implementation of personnel actions shall be subject to the availability of funds within the institution's current budget to fund the full annualized costs of these actions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a).)

§ 116-30.5. Impact on education.

The Board of Governors shall require each special responsibility constituent institution to include in its institutional effectiveness plan those assessment measures that are determined by the Board to be measures that will assure some standard measure of student learning and development in general undergraduate education at the special responsibility constituent institutions. The intent of this requirement is to measure the impact of G.S. 116-30.1 through G.S. 116-30.5, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a).)

Editor's Note. — A reference to G.S. 116-30.1 through 116-30.5 was substituted for a reference to G.S. 116-44.6 through 116-44.11, which appeared in this section in the enacting Act. G.S. 116-44.6 through 116-44.10 were recodified as Part 2A of this article, G.S. 116-30.1 through 116-30.5, at the direction of the Revisor of Statutes. There was no G.S. 116-44.11 in the enacting act.

§ 116-30.6: Repealed by Session Laws 2007-322, s. 6, effective July 30, 2007.

§ 116-30.7. Biennial projection of enrollment growth for The University of North Carolina.

By October 15 of each even-numbered year, the General Administration of The University of North Carolina shall provide to the Joint Education Legislative Oversight Committee and to the Office of State Budget and Management a projection of the total student enrollment in The University of North Carolina that is anticipated for the next biennium. The enrollment projection shall be divided into the following categories and shall include the projected growth for each year of the biennium in each category at each of the constituent institutions: undergraduate students, graduate students (students earning master's and doctoral degrees), first professional students, and any other categories deemed appropriate by General Administration. The projection shall also distinguish between on-campus and distance education students. The projections shall be considered by the Director of the Budget when determining the amount the Director proposes to fund as the continuation requirement for the enrollment increase in the university system pursuant to G.S. 143C-3-5(b). (2008-107, s. 9.15; 2009-451, s. 9.11.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 9.11, substituted "October 15" for "September 1" in the first sentence and "first" for "first-year" near the end of the second sentence.

§§ 116-30.8 through 116-30.19: Reserved for future codification purposes.

Part 2B. Private, Nonprofit Corporations.

§ 116-30.20. Establishment of private, nonprofit corporations.

The Board of Governors of The University of North Carolina shall encourage the establishment of private, nonprofit corporations to support the constituent institutions of The University of North Carolina and The University System. The President of The University of North Carolina and the chancellors of the constituent institutions may assign employees to assist with the establishment and operation of a nonprofit corporation and may make available to the corporation office space, equipment, supplies, and other related resources; provided, the sole purpose of the corporation is to support The University of North Carolina or one or more of its constituent institutions.

The board of directors of each such private, nonprofit corporation shall secure and pay for the services of The University System's internal auditors or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the Board of Governors a copy of the annual financial audit report of the private, nonprofit corporation. (2005-276, s. 9.22.)

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees.

(a) All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:

(1) Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and
(2) The president of the student government of the institution, ex officio.

(c) If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.

(d) Except as provided in G.S. 116-65, effective July 1, 1973, each of the 16 institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,
(2) Four appointed by the Governor, and
(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233.

(e) From and after July 1, 1973, the term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the Governor shall appoint two persons to each such board.

(f) In electing boards of trustees to serve commencing July 1, 1973, the Board of Governors shall designate four persons for four-year terms and four for two-year terms. The Governor, in making appointments of trustees to serve commencing July 1, 1973, shall designate two persons for four-year terms and two for two-year terms.

(g) From and after July 1, 1973, any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) No member of the General Assembly or officer or employee of the State, The University of North Carolina, or any constituent institution shall be eligible for election or appointment as a trustee. No spouse of a member of the General Assembly, or of an officer or employee of a constituent institution may be a trustee of that constituent institution. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, The University of North Carolina, or any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes an officer or employee of that constituent institution shall be deemed thereupon to resign from his membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his term commences as a member of the Board of Governors.

(j) From and after July 1, 1973, whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the Governor, it shall be the duty of the secretary of the board to inform the Governor of the existence of such vacancy, and the Governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1; 2006-66, s. 9.11(g); 2007-278, s. 2; 2008-192, s. 5.)

Editor's Note. — Session Laws 2003-239, ss. 1 and 2, provide: "Notwithstanding any requirements for additional plumbing facilities imposed under Section 403.3.1.4, Table 403.1 and Table 403.4 of Chapter 4 of the North Carolina Plumbing Code, 2002 Edition, a public university, as part of its addition of bleachers to an existing softball field, shall not be required to provide facilities in addition to those facilities currently existing at the stadium.

"This act applies to public universities located in counties that (i) have a population of 160,000 or more according to the most recent decennial federal census; (ii) border the Atlantic Ocean; and (iii) border no more than two other counties that are a part of this State."

Effect of Amendments. — Session Laws 2008-192, s. 5, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subsection (a).

CASE NOTES

Applied in Uzzell v. Friday, 592 F. Supp. 1502 (M.D.N.C. 1984).

§ 116-31.10. Powers of Board regarding certain purchasing contracts.

(a) Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than five hundred thousand dollars ($500,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

(b) Each institution with an expenditure benchmark greater than two hundred fifty thousand dollars ($250,000) shall comply with this subsection for any purchase greater than two hundred fifty thousand dollars ($250,000) but not greater than five hundred thousand dollars ($500,000). This institution shall submit to the Division of Purchase and Contract for that Division's approval or other action deemed necessary by the Division a copy of all offers received and the institution's recommendation of award or other action. Notice of the Division's decision shall be sent to that institution. The institution shall then proceed with the award of contract or other action recommended by the Division. (1997-412, s. 1; 2003-312, s. 1.)

§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars ($2,000,000) or less:

(1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.

(2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(4) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section.

(e) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded pursuant to this section.

(f) The Board of Governors shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.
(2) The estimated cost of each project along with the actual cost.
(3) The name of each person awarded a contract under this section.
(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g). (1997-412, s. 1; 2001-496, s. 8(a); 2005-300, ss. 1, 2; 2006-217, s. 2.)

Editor's Note. — Session Laws 1997-412, s. 14, made this section effective January 1, 1998, and provided that this section expired on July 1, 2001.

Session Laws 2001-496, s. 8(a), effective July 1, 2001, reenacted and amended this section as enacted and expired by Session Laws 1997-412, by substituting "two million dollars ($2,000,000)" for "five hundred thousand dollars ($500,000)" in subsection (a); and adding subsection (e).

Session Laws 2001-496, s. 13.1 is a severability clause.

Session Laws 2001-496, s. 14, provided that s. 8(a), which reenacted and amended this section, would expire December 31, 2006. Session Laws 2001-496, s. 14 was amended by Session Laws 2005-300, s. 1, to delete the expiration clause.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 437.

§ 116-31.12. Acquisition of real property by lease.

Notwithstanding G.S. 143-341(4), the Board of Governors may authorize the constituent institutions and the General Administration to acquire real property by lease if the lease is for a term of not more than 10 years. The Board of Governors shall establish a policy for acquiring an interest in real property for the use of The University of North Carolina and its constituent institutions by lease. This policy may delegate authorization of the acquisition of real property by lease to the boards of trustees of the constituent institutions or to the President of The University of North Carolina. The Board of Governors shall submit all initial policies adopted pursuant to this section to the State Property Office for review prior to adoption by the Board. Any subsequent changes to these policies adopted by the Board of Governors shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the President of The University of North Carolina. After the acquisition of an interest in real property by lease, The University of North Carolina shall promptly file a report concerning the acquisition to the Secretary of Administration. Acquisitions of an interest in real property by lease pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or to the provisions of Article 6 of Chapter 146 of the General Statutes. (2007-322, s. 9.)

Editor's Note. — Session Laws 2007-322, s. 13, made this section effective July 30, 2007.

§ 116-32. Officers and meetings of the boards of trustees.

At the first meeting after June 30 of each year each board of trustees shall elect from its membership a chairman, a vice-chairman and a secretary. Each board of trustees shall hold not less than three regular meetings a year and may hold such additional meetings as may be deemed desirable. (1971, c. 1244, s. 1.)

§ 116-33. Powers and duties of the boards of trustees.

Each board of trustees shall promote the sound development of the institution within the functions prescribed for it, helping it to serve the State in a way that will complement the activities of the other institutions and aiding it to perform at a high level of excellence in every area of endeavor. Each board shall serve as advisor to the Board of Governors on matters pertaining to the institution and shall also serve as advisor to the chancellor concerning the management and development of the institution. The powers and duties of each board of trustees, not inconsistent with other provisions of this Article, shall be defined and delegated by the Board of Governors. (1971, c. 1244, s. 1.)

Editor's Note. — Session Laws 2004-124, s. 9.7(b), provides: "The University of North Carolina at Chapel Hill shall report to the Joint Legislative Commission on Governmental Operations by July 1, 2006, and biannually thereafter, on progress locating a replacement facility for the Area Health Education Center. The Departments of Administration and Transportation shall assist the University of North Carolina at Chapel Hill as needed to secure a replacement facility."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 9.15, provides: "The Legislative Research Commission shall study the continued viability of the Area Health Education Centers (AHEC) program if the Horace Williams Airport is not available and report its findings to the General Assembly no later than the reconvening of the 2005 Regular Session of the General Assembly in 2006. In conducting the study, the Legislative Research Commission should invite physicians and pilots frequently participating in the AHEC program to appear before the Commission.

"The University of North Carolina at Chapel Hill shall operate the Horace Williams Airport and continue air transportation support for the AHEC program and the public from that location until 30 days after sine die adjournment of the 2005 Regular Session of the General Assembly."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Broad authority granted to University of North Carolina (UNC) campus trustees under G.S. 116-33, including the authority to assess fines for the loss, damage, or late return of campus library materials, is intended to promote the remedial purpose of keeping the cost of an education at the several UNC campuses as low as possible; because G.S. 116-33 advances this remedial purpose, the statute is constitutional under N.C. Const. art. IX, § 9, which is a co-equal provision with N.C. Const. art. IX, § 7. Thus, the clear proceeds of payments collected pursuant to G.S. 116-33 are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Cited in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855

(1977); Board of Governors v. United States Dep't of Labor, 917 F.2d 812 (4th Cir. 1990).

§ 116-33.1. Board of trustees to permit recruiter access.

If a board of trustees provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military. (1981, c. 901, s. 3.)

§ 116-33.2. Cooperative Extension Service employees.

The Board of Trustees of North Carolina State University shall adopt personnel policies governing the employment of the employees of the North Carolina Cooperative Extension Service who are exempted from certain provisions of Chapter 126 of the General Statutes pursuant to G.S. 126-5(c1)(9a). (2007-195, s. 2.)

Editor's Note. — Session Laws 2007-195, s. 4, made this section effective July 8, 2007.

§ 116-34. Duties of chancellor of institution.

(a) The chancellor shall be the administrative and executive head of the institution and shall exercise complete executive authority therein, subject to the direction of the President. He shall be responsible for carrying out policies of the Board of Governors and of the board of trustees. As of June 30 of each year he shall prepare for the Board of Governors and for the board of trustees a detailed report on the operation of the institution for the preceding year.

(b) It shall be the duty of the chancellor to attend all meetings of the board of trustees and to be responsible for keeping the board of trustees fully informed on the operation of the institution and its needs.

(c) It shall be the duty of the chancellor to keep the President, and through him the Board of Governors, fully informed concerning the operations and needs of the institution. Upon request, he shall be available to confer with the President or with the Board of Governors concerning matters that pertain to the institution.

(d) Subject to policies prescribed by the Board of Governors and by the board of trustees, the chancellor shall make recommendations for the appointment of personnel within the institution and for the development of educational programs. (1971, c. 1244, s. 1.)

CASE NOTES

Power of Chancellor Limited by President's Directions. — Delegation of the Board's power to campuses does not deprive the Board of control over the campuses' activity with which the delegation is connected. Instead, the statute provides that "any delegation of authority may be rescinded by the Board at any time in whole or in part." The statute also provides that the chancellor of each campus acts "subject to the direction of the President." Regardless of any authority that the Board of Governors may have delegated to the constituent campuses of UNC, the Board retains ultimate control over the campuses' activity through its unlimited power to rescind any delegation. Board of Governors v. United States

Dep't of Labor, 917 F.2d 812 (4th Cir. 1990), cert. denied, 500 U.S. 916, 111 S. Ct. 2013, 114 L. Ed. 2d 100 (1991).

Applied in Uzzell v. Friday, 592 F. Supp. 1502 (M.D.N.C. 1984).

Cited in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977); Simonel v. North Carolina Sch. of Arts, 119 N.C. App. 772, 460 S.E.2d 194 (1995); Sack v. N.C. State Univ., 155 N.C. App. 484, 574 S.E.2d 120, 2002 N.C. App. LEXIS 1610 (2002).

§ 116-35. Electric power plants, campus school, etc.

Institutions operating electric power plants and distribution systems as of October 30, 1971, are authorized to continue such operation and, after furnishing power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation, or any proceeds derived from the lease or sale, of such power plants and distribution systems are appropriated and shall be paid into the permanent endowment fund held for the institution as provided for in G.S. 116-36. Institutions operating or authorized to operate, as of October 30, 1971, water or sewer distribution systems, may continue to do so. Each of the institutions now operating a campus laboratory or demonstration school may continue to do so under the presently existing plan of operation, consistent with the appropriations made therefor. The provisions of this section shall not apply to the University Enterprises of the University of North Carolina at Chapel Hill, which shall continue to be governed in all respects as provided in Chapters 634 and 723 of the Session Laws of 1971, G.S. 116-41.1 through 116-41.12, and other applicable legislation. (1971, c. 1244, s. 1; 2006-203, s. 43.1.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 43.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "are appropriated and" following "distribution systems" in the first sentence.

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

OPINIONS OF ATTORNEY GENERAL

The words "net profit" were not intended to include funds which were needed to maintain the operating system. See opinion of Attorney General to Mr. Myron L. Coulter, Western Carolina University, 55 N.C.A.G. 35 (1985).

Western Carolina University (WCU) is not a public utility subject to supervision by the Commission, except that, pursuant to G.S. 116-35, sales to the public of excess power must be "at a rate or rates approved by the Utilities Commission." See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

Distribution of Refunds. — As to voluntary, partial refund plan submitted by Western Carolina University (WCU) for approval to the Commission for refund of a portion of refund made to it by wholesaler incident to litigation to its own retail customers for the years involved, the language of the escheats statute, former G.S. 116B-15, did not become operative so as to mandate the escheating to the State Treasurer of unclaimed refunds, and as proposed to be treated by WCU to maintain the existing system for accounting purposes, the refunds did not constitute net profits which had to be turned over to the endowment fund. See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

§ 116-36. Endowment fund.

(a) The board of trustees of each constituent institution shall establish and maintain, pursuant to such terms and conditions, uniformly applicable to all constituent institutions, as the Board of Governors of the University of North Carolina may from time to time prescribe, an endowment fund for the constituent institution.

(b) It is not the intent of this section that the proceeds from any endowment fund shall take the place of State appropriations or any part thereof, but it is the intent of this section that those proceeds shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(c) Pursuant to the foregoing subsections and consistent with the powers and duties prescribed in this section, each board of trustees shall appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of ____________" (here shall be inserted the name of the constituent institution).

(d) The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from State appropriations and from tuition and fees collected from students and used for the general operation of the institution.

(e) The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.

(f) In the process of prudent investment of the fund or to realize the statutory intent of the endowment, the board of trustees of the endowment fund may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used. To realize the statutory intent of the endowment fund, the board of trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the constituent institution; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer.

(g) The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143, 143C, and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget.

(h) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired by the University of

North Carolina for the benefit of the University as a whole, or for the joint benefit of any two or more constituent institutions of the University.

(i) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Press.

(i1) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.

(j) Any gift, devise, or bequest of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the respective institution or agency.

(k) Whenever any property of an endowment fund authorized by this section is disposed of or otherwise transferred from the endowment fund, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the board of trustees of the endowment fund.

(*l*) The proceeds and funds described by this section are appropriated and may be used only as provided by this section.

(m) Chapter 36E of the General Statutes applies to an endowment fund authorized by this section. (1971, c. 1244, s. 1; 1977, c. 506; 1979, c. 649, ss. 2, 3; 1983, c. 717, s. 31; 1985 (Reg. Sess., 1986), c. 955, ss. 28, 29; 2006-203, ss. 44, 44.1; 2009-8, s. 5.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, ss. 44 and 44.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (g), substituted "143, 143C, and 146" for "143 and 146" following "Chapters," and deleted the former last sentence, which read: "Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission"; and added subsection (*l*).

Session Laws 2009-8, s. 5, effective March 19, 2009, added subsection (m).

Legal Periodicals. — For article, "Legal Aspects of Changing University Investment Strategies," see 58 N.C.L. Rev. 189 (1980).

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

OPINIONS OF ATTORNEY GENERAL

University of North Carolina Center for Public Television. — The endowment fund of the University of North Carolina Center for Public Television may enter into agreements with private or public entities for the use of the Center's facilities to create commercial materials which may be unrelated to educational purposes, so long as the proceeds of such agreements are used for the benefit of the Center's educational mission. See opinion of Attorney General to Leslie J. Winner, University of North Carolina Vice President and General Counsel, 2002 N.C.A.G. 34 (10/16/02).

§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;

(10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.;

(11) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529; 1983, c. 913, s. 19; 1989 (Reg. Sess., 1990), c. 936, s. 1(c); 2005-397, s. 3; 2006-203, s. 45.)

Editor's Note. — Subdivision (11) of this section was enacted as subdivision (10) by Session Laws 2006-203, s. 45. It was renumbered as subdivision (11) at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 45, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (d), substituted "State Budget Act" for "Executive Budget Act" and substituted "G.S. 143C-8-8 and G.S. 143C-8-9" for "G.S. 143-18.1"; inserted "is appropriated and" following "general institutional purposes" in subsection (f); and added subdivision (g)(10).

§ 116-36.2. Regulation of special funds of individual institutions.

(a) Notwithstanding Chapter 143C or any provisions of law other than Article 5A of Chapter 147 of the General Statutes, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The special funds of individual institutions regulated by this section are appropriated and may be used only as authorized by this section.

(b) As used in this section, "special funds of individual institutions" means:

(1) Moneys received from or for the operation by an institution of its program of intercollegiate athletics;

(2) Moneys held by an institution as fiscal agent for individual students, faculty, staff members, and organizations. (1977, 2nd Sess., c. 1136, s. 31; 1983, c. 913, s. 19; 2006-203, s. 46.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 46, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in subsection (a), added "Chapter 143C or" following "Notwithstanding", and added the last sentence.

§ 116-36.3: Repealed by Session Laws 1989 (Regular Session, 1990), c. 936, s. 1(b).

§ 116-36.4. Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds are appropriated and may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172; 1987, c. 738, s. 233(b); 1993, c. 406, s. 1; 1995, c. 507, s. 15.7; 2006-203, s. 46.1.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 46.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "are appropriated and" following "Net proceeds" in the last sentence.

§ 116-36.5. Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term "Horace Williams Campus" is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(d) The moneys described by this section are appropriated and may be used only as provided by this section. (1987, c. 790, s. 1; 1998-159, s. 1; 1999-234, s. 1; 2000-177, ss. 1, 2; 2006-203, s. 47.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added "and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes" at the end of the second sentences of subsections (a) through (c); and added subsection (d).

§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds are appropriated and shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2) Repealed by Session Laws 2005-276, s. 9.26(a).

(2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of Medicine for the family medicine center and for purposes consistent with its stated mission.

(3) Repealed by Session Laws 2005-276, s. 9.26(a). (1995, c. 507, s. 15.4; 2005-276, s. 9.26(a); 2006-203, s. 47.1.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, inserted "are appropriated and" following "these funds" in the second sentence.

§ 116-37. University of North Carolina Health Care System.

(a) Creation of System. —

(1) There is hereby established the University of North Carolina Health Care System, effective November 1, 1998, which shall be governed and administered as an affiliated enterprise of The University of North Carolina in accordance with the provisions of this section, to provide patient care, facilitate the education of physicians and other health care providers, conduct research collaboratively with the health sciences schools of the University of North Carolina at Chapel Hill, and render other services designed to promote the health and well-being of the citizens of North Carolina.

(2) As of November 1, 1998, all of the rights, privileges, liabilities, and obligations of the board of directors of the University of North Carolina Hospitals at Chapel Hill, not inconsistent with the provisions of this section, shall be transferred to and assumed by the board of directors of the University of North Carolina Health Care System.

(3) The University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs established or maintained by the School of Medicine of the University of North Carolina at Chapel Hill shall be governed by the board of directors of the University of North Carolina Health Care System.

(4) With respect to the provisions of subsections (d), (e), (f), (h), (i), (j), and (k) of this section, the board of directors may adopt policies that make the authorities and responsibilities established by one or more of said subsections separately applicable either to the University of North Carolina Hospitals at Chapel Hill or to the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill, or to both.

(5) To effect an orderly transition, the policies and procedures of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill and of the University of North Carolina Hospitals at Chapel Hill effective as of October 31, 1998, shall remain effective in accordance with their terms until changed by the Board of Directors of the University of North Carolina Health Care System.

(b) Board of Directors. — There is hereby established a board of directors of the University of North Carolina Health Care System, effective November 1, 1998.

(1) The board of directors initially shall be composed as follows:

a. A minimum of six members ex officio of said board shall be the President of The University of North Carolina (or the President's designee); the Chief Executive Officer of the University of North Carolina Health Care System; two administrative officers of the University of North Carolina at Chapel Hill designated by the Chancellor of that institution; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the Dean of the School of Medicine; provided, that if not such a member ex officio by virtue of holding one or more of the offices aforementioned, additional ex officio memberships shall be held by the President of the University of North Carolina Hospitals at Chapel Hill and the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, for a total potential ex officio membership of eight.

b. No less than nine and no more than 21 members at large, which number shall be determined by the board of directors, shall be appointed for four-year terms, commencing on November 1 of the year of appointment; provided, that the initial class of at-large members shall include the persons who hold the appointed memberships on the board of directors of the University of North Carolina Hospitals at Chapel Hill incumbent as of October 31, 1998, with their terms of membership on the board of directors of the University of North Carolina Health Care System to expire on the last day of October of the year in which their term as a member of the board of directors of the University of North Carolina Hospitals at Chapel Hill would have expired. Vacant at-large positions shall be filled by the appointment of persons from the business and professional public at large who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of The University of North Carolina, nor officers or employees of the State. Members shall be appointed by the President of the University, and ratified by the Board of Governors, from among a slate of nominations made by the board of directors of the University of North Carolina Health Care System, said slate to include at least twice as many nominees as there are vacant positions to be filled. No member may be appointed to more than two full four-year terms in succession; provided, that persons holding appointed memberships on November 1, 1998, by virtue of their previous membership on the board of directors of the University of North Carolina Hospitals at Chapel Hill, shall not be eligible, for a period of one year following expiration of their term, to be reappointed to the board of directors of the University of North Carolina Health Care System. Any vacancy in an unexpired term shall be filled by an appointment made by the President, and ratified by the Board of Governors, upon the nomination of the board of directors, for the balance of the term remaining.

(2) The board of directors, with each ex officio and at-large member having a vote, shall elect a chairman from among the at-large members, for a term of two years; no person shall be eligible to serve as chairman for more than three terms in succession.

(3) The board of directors of the University of North Carolina Health Care System shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of the chairman. Board members, other than ex officio members, shall receive the same per diem and reimbursement for travel expenses as members of the State boards and commissions generally.

(4) In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the board of directors is authorized to exercise such authority and responsibility and adopt such policies, rules, and regulations as it deems necessary and appropriate, not inconsistent with the provisions of this section or the policies of the Board of Governors. The board may authorize any component of the University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the board of directors may direct. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the Chancellor of the University of North Carolina at Chapel Hill. The board of directors shall keep the Board of Governors and the board of trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education, and research for improvement of the health of the citizens of North Carolina.

(c) Officers. —

(1) The executive and administrative head of the University of North Carolina Health Care System shall have the title of "Chief Executive Officer." The board of directors, in cooperation with the board of trustees and the Chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the Chancellor deem appropriate, shall identify, in cooperation with the Chancellor, two or more persons as candidates for the office, who, pursuant to criteria agreed upon by the boards and the Chancellor, have the qualifications for both the positions of Chief Executive Officer and Vice-Chancellor for Medical Affairs of the University of North Carolina at Chapel Hill. The names of the candidates so identified shall be forwarded by the Chancellor to the President of The University of North Carolina, who if satisfied with the quality of one or more of the candidates, will nominate one as Chief Executive Officer, subject to selection by the Board of Governors. The Chief Executive Officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the board of directors.

(2) The executive and administrative head of the University of North Carolina Hospitals at Chapel Hill shall have the title of "President of the University of North Carolina Hospitals at Chapel Hill."

(3) The board of directors shall elect, on nomination of the Chief Executive Officer, the President of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff

employees as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer.

(d) Personnel. — Employees of the University of North Carolina Health Care System shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the University of North Carolina Health Care System, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the board of directors; provided, that with respect to such employees as may be members of the faculty of the University of North Carolina at Chapel Hill, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina.

(1) The board of directors shall fix or approve the schedules of pay, expense allowances, and other compensation and adopt position classification plans for employees of the University of North Carolina Health Care System.

(2) The board of directors may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.

(3) The board of directors may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the University of North Carolina Health Care System.

(4) The board of directors may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of directors may direct.

The board of directors shall submit all initial classification and pay plans and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(e) Finances. — The University of North Carolina Health Care System shall be subject to the provisions of the State Budget Act, except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to G.S. 147-69.2(b3). General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts.

(f) Finances — Patient/Health Care System Benefit. — The Chief Executive Officer of the University of North Carolina Health Care System, or the Chief Executive Officer's designee, may expend operating budget funds, including State funds, of the University of North Carolina Health Care System for the direct benefit of a patient, when, in the judgment of the Chief Executive Officer or the Chief Executive Officer's designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Health Care System. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Health Care System for which the health care system may bill and pursue recovery in the same way as allowed by law for recovery of other health care systems' charges for services that are unpaid.

These expenditures shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; or (v) to pay health insurance premiums. The Chief Executive Officer or the Chief Executive Officer's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.

To the extent that the University of North Carolina Health Care System advances anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump-sum "back-pay" award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this back pay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Health Care System, if, prior to the disbursement of the back pay, the applicable State program has received notice from the University of North Carolina Health Care System of the advancement.

(g) Reports. — The Chief Executive Officer and the President of The University of North Carolina jointly shall report by September 30 of each year on the operations and financial affairs of the University of North Carolina Health Care System to the Joint Legislative Commission on Governmental Operations. The report shall include the actions taken by the board of directors under the authority granted in subsections (d), (h), (i), and (j) of this section.

(h) Purchases. — Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the board of directors shall establish policies and regulations governing the purchasing requirements of the University of North Carolina Health Care System. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical, educational, research, and community service missions of the University of North Carolina Health Care System. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(i) Property. — The board of directors shall establish rules and regulations for acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. This section does not authorize the board of directors to encumber real property. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, the University of North Carolina Health Care System shall promptly file a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.

(j) Property — Construction. — Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of directors shall adopt policies and procedures with respect to the design, construction, and renovation of buildings, utilities, and other property developments of the University of North Carolina Health Care System requiring the expenditure of public money for:

(1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.

(2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).

(3) Using open-end design agreements.

(4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Health Service Regulation of the Department of Health and Human Services.

(5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of directors shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(k) Patient Information. — The University of North Carolina Health Care System shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose the patient's social security number, if any. If the patient does not disclose that number, the University of North Carolina Health Care System shall deny benefits, rights, and privileges of the University of North Carolina Health Care System to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. The University of North Carolina Health Care System shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c). (1971, c. 762, s. 1; c. 1244, s. 6; 1981, c. 859, s. 41.5; 1983, c. 717, s. 32; 1985 (Reg. Sess., 1986), c. 955, ss. 30, 31; 1989, c. 141, s. 1; 1991, c. 550, s. 2; c. 689, s. 206.2(d); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1998-212, s. 11.8(a); 1999-252, s. 4(a); 2005-417, s. 3; 2006-203, s. 47.2; 2007-182, s. 1; 2007-306, s. 1.)

Editor's Note. — Session Laws 2002-159, s. 91, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted by the University of North Carolina School of Medicine and the Psychology Department within the School of Arts and Sciences at the University of North Carolina at Chapel Hill at Dorothea Dix Hospital and John Umstead Hospital, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the School of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry, and the University of North Carolina School of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. Likewise, the Secretary shall consult with the University of North Carolina School of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina School of Arts and Sciences."

Session Laws 2003-314, s. 3.1, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted at Dorothea Dix Hospital and John Umstead Hospital by the University of North Carolina School of Medicine and by the Psychology Department within the College of Arts and Sciences at the University of North Carolina at Chapel Hill, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the College of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry and the University of North Carolina College of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and at any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. In addition, the Secretary shall consult with the University of North Carolina College of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina College of Arts and Sciences."

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 47.2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" in subsection (e).

OPINIONS OF ATTORNEY GENERAL

Acquisition of Nonprofit Corporation by University of North Carolina Health Care System. — After the acquisition of a nonprofit corporation by the University of North Carolina Health Care System, the corporation would not be directly subject to the same statutory oversight requirements imposed upon the system and other public entities, but would be indirectly subject to a substantial degree of public accountability through the statutory requirements imposed upon the system, which remained subject to the provisions of the Executive Budget Act, including all aspects of budget preparation, budget execution, and expenditure reporting. See opinion of Attorney General to Representative Daniel T. Blue, Jr., 2000 N.C. AG LEXIS 23 (3/8/2000).

§ 116-37.1. Center for public television.

(a) The Board of Governors is hereby authorized and directed to establish "the University of North Carolina Center for Public Television" (hereinafter called "the Center"). It shall be the functions of the Center, through itself or agencies with whom it may contract, to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to the University of North Carolina; and otherwise to enhance the uses of television for public purposes.

(b) The Center shall have a board of trustees, to be named "the Board of Trustees of the University of North Carolina Center for Public Television" (hereinafter called "the Board of Trustees"). The Board of Governors is hereby authorized and directed to establish the Board of Trustees of the Center and to delegate to the Board of Trustees such powers and duties as the Board of Governors deems necessary or appropriate for the effective discharge of the functions of the Center; provided, that the Board of Governors shall not be deemed by the provisions of this section to have the authority to delegate any responsibility it may have as licensee of the broadcast facilities of the University of North Carolina.

(1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the following membership: 11 persons appointed by the Board of Governors; four persons appointed by the Governor; two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Health and Human Services, the Superintendent of Public Instruction, the President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two persons for four-year terms. The initial members appointed to the Board of Trustees by the General Assembly shall serve for terms expiring June 30, 1983, and notwithstanding anything else in this section, their successors shall be appointed in 1983 and biennially thereafter for two-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina.

(2) No person shall be appointed to the Board of Trustees who is an employee of the State or of any constituent institution; a public officer of the State as defined in G.S. 147-1, 147-2, and 147-3(c); a member of the Board of Governors; a trustee of a constituent institution; or the spouse of any of the foregoing. Any appointed member of the Board of

Trustees who after appointment becomes any of the foregoing shall be deemed to have resigned from the Board of Trustees.

(3) Each ex officio member of the Board of Trustees shall personally serve on the Board of Trustees but may designate in writing a proxy for specified meetings which the ex officio member finds he or she is unable reasonably to attend.

(4) Each appointive member of the Board of Trustees shall personally serve on the Board of Trustees without benefit of proxy. Any appointive member who fails, for any reason other than ill health or service in the interest of the State or the nation, to attend three consecutive regular meetings of the Board of Trustees, shall be deemed to have resigned from the Board of Trustees.

(5) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies occurring during a term among the appointive membership of the Board of Trustees shall be filled for the remainder of the unexpired term by appointment of the original appointing authority for the vacant seat. The principal officer of the Board of Trustees shall promptly notify the Secretary of the University of North Carolina of the vacancy and the Secretary shall give written notice of the vacancy to the appropriate appointing authority.

(c) The chief administrative officer of the Center shall be a Director, who shall be elected by the Board of Governors upon recommendation of the President and who shall be responsible to the President. The Center shall have such other staff as the Board of Governors may authorize. (1979, c. 649, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 54, 55; 1987, c. 564, s. 33; 1995, c. 490, s. 61; 1997-443, s. 11A.118(a).)

Editor's Note. — Former G.S. 116-37.1 was transferred to G.S. 116-40.2 by Session Laws 1971, c. 1244, s. 10.

CASE NOTES

Cited in Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

OPINIONS OF ATTORNEY GENERAL

Agreements for Use of Facilities. — Agreements between the University of North Carolina Center for Public Television and private entities involving the production of commercial, non-educational products would both exceed its statutory authority and violate the Umstead Act; however, the Center is authorized to enter into agreements with private or public entities where such agreements will result in the creation of non-commercial, educational products. See opinion of Attorney General to Leslie J. Winner, University of North Carolina Vice President and General Counsel, 2002 N.C.A.G. 34 (10/16/02).

§ 116-37.2. Regulation of University of North Carolina Hospitals at Chapel Hill Funds.

(a) As used in this section, "funds" means:

(1) Moneys, or the proceeds of other forms of property, received by the University of North Carolina Hospitals at Chapel Hill as gifts, devises, or bequests.

(2) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.

(3) Moneys received by the University of North Carolina Hospitals at Chapel Hill pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the University of North Carolina Hospitals at Chapel Hill undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training, or public service programs.

(4) Moneys received from or for the operation by the University of North Carolina Hospitals at Chapel Hill of any of its self-supporting auxiliary enterprises, including the Liability Insurance Trust Fund.

(5) Moneys received by the University of North Carolina Hospitals at Chapel Hill in respect to fees and other payments for services it renders in its hospital and/or clinical operations.

(6) The net proceeds from the disposition effected pursuant to Article 7 of Chapter 146 of the General Statutes of any interest in real property owned by or under the supervision and control of the University of North Carolina Hospitals at Chapel Hill if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection, except the net proceeds from the disposition of an interest in real property first acquired by the University of North Hospitals at Chapel Hill through expenditure of moneys received as a grant from a State agency.

(b) The Board of Directors of the University of North Carolina Health Care System, as established in G.S. 116-37(b), is responsible for the custody and management of the funds of the University of North Carolina Hospitals at Chapel Hill. The Board shall adopt uniform policies and procedures applicable to the administration of these funds, which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the Chief Executive Officer of the University of North Carolina Health Care System to the President of the University of North Carolina Hospitals at Chapel Hill, when such delegation is necessary or prudent to enable the University of North Carolina Hospitals at Chapel Hill to function in a proper and expeditious manner.

(c) Funds under this section shall be deposited with the State Treasurer who shall hold them in trust in the name of the University of North Carolina Hospitals at Chapel Hill.

(d) Funds deposited with the State Treasurer in an account pursuant to this section, and investment earnings thereon, are available for expenditure by the University of North Carolina Hospitals at Chapel Hill without further authorization from the General Assembly.

(e) Funds under this section are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the Executive Budget Act except for capital improvements projects, which shall be authorized and executed in accordance with G.S. 143-18.1.

(f) The University of North Carolina Hospitals at Chapel Hill shall submit such reports or other information concerning its fund accounts under this section as may be required by the Director of the Budget.

(g) Funds under this section, or the investment income therefrom, shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the University of North Carolina Hospitals at Chapel Hill may improve and increase their functions, may enlarge their areas of service, and may become more useful to a greater number of people.

(h) Notwithstanding the provisions of subsection (c) of this section, the Board may designate as the official depository of the funds identified in subdivisions (a)(4), (a)(5), and (a)(6) of this section one or more banks or trust companies in this State for any investments authorized by G.S. 147-69.2(b3). (2005-417, s. 4.)

§ 116-38. Child development research and demonstration center.

(a) The Chapel Hill City Board of Education is authorized to enter into long-term agreements and contracts with the University of North Carolina for the purpose of providing for the establishment and operation of a child development research and demonstration center. The Board is additionally authorized to lease or transfer title to real and personal property, including buildings and equipment, with or without compensation, to the University for this purpose.

(b) If an elementary school meeting the requirements for accreditation established by the State Board of Education is operated in conjunction with the center such school shall receive financial support through the Chapel Hill City Board of Education from State, county, and administrative unit sources on the same basis as the other elementary schools in the Chapel Hill city administrative unit.

(c) All personnel of the center whose salaries are paid in whole or part from funds administered by the State Board of Education or the Chapel Hill City Board of Education, from whatever sources derived, shall be employed only upon the mutual concurrence of the superintendent of the Chapel Hill city administrative unit and the director of the center. (1965, c. 690; 1971, c. 1244, s. 7.)

§ 116-39. Agricultural research stations.

The agricultural research stations shall be connected with North Carolina State University at Raleigh and shall be controlled by the Board of Governors of the University of North Carolina. (1907, c. 406, s. 12; C.S., s. 5825; 1963, c. 448, s. 9; 1965, c. 213; 1971, c. 1244, s. 8.)

Editor's Note. — Session Laws 2007-323, s. 11.4(a) and (b) provides: "(a) The Performance Evaluation Division of the General Assembly shall study the structure and management practices of the 18 agricultural research stations and research farms currently owned either by North Carolina State University or the Department of Agriculture and Consumer Services and currently managed by the Department of Agriculture and Consumer Services. This study shall consider ways to achieve efficiency savings and whether it is desirable and feasible to consolidate or transfer to another State department these research stations and research farms.

"(b) No later than May 1, 2008, the Performance Evaluation Division of the General Assembly shall prepare a report of the findings and recommendations of the study and submit this report to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§§ 116-39.1, 116-39.2: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-40. Board to accept gifts and congressional donations.

The Board of Governors shall use, as in its judgment may be proper, for the purposes of the University and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such Board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The Board of Governors shall have power to accept and receive on the part of the State, property, personal, real or mixed, and any donations from the United States Congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the Congress in relation thereto. (1907, c. 406, s. 6; C.S., s. 5816; 1963, c. 448, s. 8; 1971, c. 1244, s. 9.)

§ 116-40.1. Land scrip fund.

The Board of Governors shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars ($125,000), issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the State Treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of North Carolina State University at Raleigh in accordance with the act of the Congress approved July 2, 1862, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and mechanic arts." (1907, c. 406, s. 8; C.S., s. 5817; 1963, c. 448, s. 8; 1965, c. 213; 1971, c. 1244, s. 9.)

§ 116-40.2. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.

In connection with the construction of, assembling of, use and operation of, any nuclear reactor now owned or hereafter acquired by it, North Carolina State University is hereby authorized and empowered to procure proper insurance against the hazards of explosion, implosion, radiation and any other special hazards unique to nuclear reactors, including nuclear fuel and all other components thereto. Further, North Carolina State University is authorized to enter into agreements with the United States Atomic Energy Commission prerequisite to licensing by that agency of nuclear reactors and to maintain as a part of such agreement or agreements appropriate insurance in amounts required by the Atomic Energy Commission of nuclear reactor licenses.

To the extent that North Carolina State University shall obtain insurance under the provisions of this section, it is hereby authorized and empowered to waive its governmental immunity from liability for damage to property or injury to or death to persons arising from the assembling, construction of, use and operation of nuclear reactors. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but only to the extent that North Carolina State University is indemnified by such insurance.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to do a business of insurance in this State except to the extent that such insurance may be furnished by or through a governmental agency created for the purpose of insuring against such hazards or through reinsurance pools or associations established to insure against such hazards.

Any person sustaining property damage or personal injury may sue North Carolina State University for damages for injury arising out of the construction, assembly, use or operation of a nuclear reactor on the campus of the University in the Superior Court of Wake County, and to the extent that the University is indemnified by insurance, it shall be no defense to any such action that the University was engaged in the performance of a governmental or discretionary function of the University. In the case of death alleged to have been caused by the assembly, construction, use or operation of such nuclear reactor, the personal representative of the deceased person may bring such action.

Nothing in this section shall in any way affect any other actions which have been or may hereafter be brought under the Tort Claims Act against North Carolina State University, nor shall the provisions of this section in any way abrogate or replace the provisions of the Workers' Compensation Act. (1969, c. 1023; 1971, c. 1244, s. 10; 1991, c. 636, s. 3; 1993, c. 553, s. 33.)

§ 116-40.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.

Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina University, North Carolina Central University, North Carolina Agricultural and Technical State University, Appalachian State University, and Western Carolina University, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the master's degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632; 1967, c. 1038; 1969, c. 114, s. 1; c. 608, s. 1; 1971, c. 1244, s. 10.)

§ 116-40.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.

The Board of Trustees of East Carolina University is hereby authorized to create a school of medicine at East Carolina University, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association, the Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2; 1967, c. 1038; 1971, c. 1244, s. 10.)

CASE NOTES

East Carolina University School of Medicine is a constituent institution of The University of North Carolina. Jones v. Pitt County Mem. Hosp., 104 N.C. App. 613, 410 S.E.2d 513 (1991).

§ 116-40.5. Campus law enforcement agencies.

(a) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing the campus police officer and that portion of any public road or highway passing through such property or immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(d) The Board of Trustees of any constituent institution of The University of North Carolina, or the Board of Directors of the North Carolina Arboretum, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any other constituent institution of The University of North Carolina to extend the law enforcement authority of its campus police officers into any or all of the other institution's jurisdiction and to determine the circumstances in which this extension of authority may be granted. (1987, c. 671, s. 2; 1997-194, s. 1; 2001-397, s. 1; 2007-285, s. 1.)

Local Modification. — City of Durham: 2003-329, s. 2.

§ 116-40.6. East Carolina University Medical Faculty Practice Plan.

(a) Medical Faculty Practice Plan. — The "Medical Faculty Practice Plan", a division of the School of Medicine of East Carolina University, operates clinical programs and facilities for the purpose of providing medical care to the general public and training physicians and other health care professionals.

(b) Personnel. — Employees of the Medical Faculty Practice Plan shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the Medical Faculty Practice Plan, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the Board of Trustees of East Carolina University; provided, that with respect to such employees as may be members of the faculty of East Carolina University, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina. Such policies and procedures shall be implemented on behalf of the Medical Faculty Practice Plan by a personnel office maintained by East Carolina University.

(1) The board of trustees shall fix or approve the schedules of pay, expense allowances, and other compensation, and adopt position classification plans for employees of the Medical Faculty Practice Plan.

(2) The board of trustees may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay, or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards, and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.

(3) The board of trustees may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the Medical Faculty Practice Plan.

(4) The board of trustees may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of trustees may direct.

The board of trustees shall submit all initial classification and pay plans, and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall be submitted to the Chancellor of East Carolina University and the President of The University of North Carolina.

(c) Purchases. — Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the Board of Trustees of East Carolina University shall establish policies and regulations governing the purchasing requirements of the Medical Faculty Practice Plan. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical and educational missions of the Medical Faculty Practice Plan. Pursuant to such policies and regulations, purchases for the Medical Faculty Practice Plan shall be effected by a purchasing office maintained by East Carolina University. The board of trustees shall submit all initial policies and regulations adopted under this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina.

(d) Property. — The board of trustees shall establish rules and regulations for acquiring or disposing of any interest in real property for the use of the Medical Faculty Practice Plan. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the Medical Faculty Practice Plan. This section does not authorize the board of trustees to encumber real property. Such rules and regulations shall be implemented by a property office maintained by East Carolina University. The board of trustees shall submit all initial rules and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption. Any subsequent changes to these rules and regulations shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, East Carolina University shall promptly file, on behalf of the Medical Faculty Practice Plan, a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.

(e) Property — Construction. — Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of trustees shall adopt policies and procedures to be implemented by the administration of East Carolina University, with respect to the design, construction, and renovation of buildings, utilities, and other property developments for the use of the Medical Faculty Practice Plan, requiring the expenditure of public money for:

(1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.
(2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).
(3) Using open-end design agreements.
(4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Health Service Regulation of the Department of Health and Human Services.
(5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of trustees shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina. (1998-212, s. 11.8(f); 1999-252, s. 4(b); 2007-182, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Real Property. — The "State of North Carolina" shall be named as the grantor/grantee in dispositions and acquisitions of real property on behalf of the Medical Faculty Practice Plan. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

Subsection (d) of this section does not exempt the Medical Faculty Practice Plan from the requirements contained in G.S. 146-22 and 146-27 pertaining to consultation with the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State with regard to acquisitions and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

Subsection (d) of this section does not authorize the Medical Faculty Practice Plan to employ outside legal counsel to perform legal services in connection with the acquisition and dispositions of real property. See opinion of Attorney General to Mr. Layton Getsinger, Associate Vice-Chancellor for Administration & Finance and Executive Director of Business Services, East Carolina University, 1999 N.C.A.G. 6 (3/1/99).

§ 116-40.7. Internal auditors.

(a) Internal auditors within The University of North Carolina and its constituent institutions shall provide independent reviews and analyses of various functions and programs within The University of North Carolina that will provide management information to promote accountability, integrity, and efficiency within The University of North Carolina.

(b) An internal auditor shall have access to any records, data, or other information of The University of North Carolina or the relevant constituent institution that the internal auditor believes necessary to carry out the internal auditor's duties.

(c) An internal auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of that auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. To promote cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential and shall not be open to examination or inspection under G.S. 132-6 until completion of the audit report that is based on the working paper. Audit reports and the working papers on which they are based shall be public records subject to examination and inspection to the extent that they do not include information that, under State law, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of The University of North Carolina. At the time that audit working papers are made available for public examination or inspection, the custodian of the audit working paper may redact the name and personally identifying information of a person who has initiated an allegation of (i) a violation of State or federal law or rule or regulation; (ii) fraud; (iii) misappropriation of State resources; (iv) substantial and specific danger to the public health and safety; or (v) gross mismanagement, gross waste of monies, or gross abuse of authority, if that person requests that the person's name and personally identifying information be kept confidential. (2004-203, s. 46; 2007-372, s. 3.)

§ 116-40.8. University of North Carolina at Pembroke designated as North Carolina's Historically American Indian University.

The University of North Carolina at Pembroke is officially designated as North Carolina's Historically American Indian University. (2005-153, s. 1.)

Editor's Note. — Session Laws 2005-153, s. 1 was codified as this section at the direction of the Revisor of Statutes.

The preamble to Session Laws 2005-153, provides: "Whereas, the University of North Carolina at Pembroke was originally established in 1887 as Croatan Normal School in response to a petition from the American Indian people in the Robeson County area; and

"Whereas, the General Assembly changed the name in 1911 to the Indian Normal School of Robeson County and again in 1913 to the Cherokee Indian Normal School of Robeson County; and

"Whereas, in 1926, the Board of Trustees added a two-year normal program beyond high school, and phased out elementary education; and

"Whereas, the first 10 diplomas were awarded in 1928, when the State accredited the school as a 'standard normal school', and additional college courses were later added with the first college degrees conferred in 1940; and

"Whereas, in 1941, the General Assembly changed the name to Pembroke State College for Indians, and the school's curricula further expanded; and

"Whereas, in 1945, enrollment was further expanded to include American Indians from other tribes, and in 1949 the name was shortened to Pembroke State College; and

"Whereas, in the wake of the 1950s and 1960s civil rights and school desegregation laws, the General Assembly changed the name in 1969 to Pembroke State University and made the school a regional university; and

"Whereas, three years later, in 1972, the General Assembly established the 16-campus University of North Carolina System, with Pembroke State University as one of its constituent institutions; and

"Whereas, on July 1, 1996, Pembroke State University officially became the University of North Carolina at Pembroke; and

"Whereas, The University of North Carolina System currently consists of 16 university campuses, five of which are designated as Historically Black Colleges and Universities, but the University of North Carolina at Pembroke has never been officially acknowledged as a Historically American Indian University; Now, therefore, The General Assembly of North Carolina enacts:"

§ 116-40.9. Board of Governors' Medical Scholarship Loan Program.

(a) Administration of Medical Scholarship Loan Program. — The Board of Governors' Medical Scholarship Loan Program was established by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Loan Program operates under the purview of the Board of Governors and is administered by the Board of Governors.

(b) Medical Scholarship Loan Program. — Pursuant to this section, the Board of Governors' Medical Scholarship Loan Program may provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual stipend of five thousand dollars ($5,000) per year to any student who has been accepted for admission to the Duke University School of Medicine, the Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine.

(c) Criteria for Awarding Scholarship Loans. — The Board of Governors may adopt standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board of Governors shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program.

(d) Terms of Scholarship Loans. — All awards made under this section shall be made as scholarship loans and shall be evidenced by notes made payable to the Board of Governors that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board of Governors. The Board of Governors shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. The Board of Governors shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient.

(e) Reversions. — All unused funds appropriated to or otherwise received by the Board of Governors for scholarship loans, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year. (2007-323, s. 9.4(a).)

Editor's Note. — Session Laws 2007-323, s. 9.4(b), made this section effective July 1, 2007, and applicable to all awards from the Board of Governors' Medical Scholarship Program made to students admitted into medical school on or after July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 116-40.10. Board of Governors' Dental Scholarship Loan Program.

(a) Administration of Dental Scholarship Program. — The Board of Governors' Dental Scholarship Loan Program was established by the Board of Governors of The University of North Carolina. The Board of Governors' Dental Scholarship Loan Program operates under the purview of the Board of Governors and is administered by the Board of Governors.

(b) Dental Scholarship Loan Program. — Pursuant to this section, the Board of Governors' Dental Scholarship Loan Program may provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers to any first-year students, required dental equipment, and an annual stipend of five thousand dollars ($5,000) per year to any student who has been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill.

(c) Criteria for Awarding Scholarship Loans. — The Board of Governors may adopt standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board of Governors shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program.

(d) Terms of Scholarship Loans. — All awards made under this section shall be made as scholarship loans and shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board of Governors. The Board of Governors shall forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. The Board of Governors shall also forgive the loan if it finds that it is impossible for the recipient to practice dentistry in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient.

(e) Reversions. — All unused funds appropriated to or otherwise received by the Board for scholarship loans, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year. (2007-323, s. 9.5(a).)

Editor's Note. — Session Laws 2007-323, 9.5(b), made this section effective July 1, 2007, and applicable to all awards from the Board of Governors' Dental Scholarship Program made to students admitted to the School of Dentistry at the University of North Carolina at Chapel Hill on or after July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

§§ 116-40.11 through 116-40.19: Reserved for future codification purposes.

Part 3A. Management Flexibility for Special Responsibility Constituent Institutions.

§ 116-40.20. Legislative findings.

(a) The General Assembly finds that The University of North Carolina and its constituent institutions is one of the State's most valuable assets. The General Assembly further finds that to provide the best benefit to North Carolina, the constituent institutions of The University of North Carolina need special budgeting flexibility in order to maximize resources, to enhance competitiveness with other peer institutions regionally, nationally, and internationally, and to provide the strongest educational and economic opportunity for the citizens of North Carolina.

(b) To ensure the continued preeminence of The University of North Carolina and its constituent institutions, it is the intent of the General Assembly to strengthen and improve these assets. The General Assembly commits to responsible stewardship and improvement of The University of North Carolina and its constituent institutions as provided by this Part. (2001-424, s. 31.11(a).)

§ 116-40.21. Board of governors may authorize management flexibility.

The Board of Governors of The University of North Carolina may authorize management flexibility for any special responsibility constituent institution as provided by this Part. The procedure for that authorization is the same as that to designate a constituent institution a special responsibility constituent institution under G.S. 116-30.1. (2001-424, s. 31.11(a).)

§ 116-40.22. Management flexibility.

(a) Definition. — For purposes of this section, the term "institution" means a special responsibility constituent institution that is granted management flexibility by the Board of Governors in compliance with this Part.

(b) Appoint and Fix Compensation of Senior Personnel. — Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, the Board of Trustees of an institution shall, on recommendation of the Chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers, and any person having permanent tenure at that institution. No later than January 1, 2002, the Board of Governors shall adopt policies, compensation structures, and pay ranges concerning the appointment and compensation of senior personnel appointed by the Board of Trustees pursuant to this section. Compensation for senior personnel fixed by the Board of Trustees pursuant to this section shall be consistent with the compensation structure, policies, and pay ranges set by the Board of Governors.

(c) Tuition and Fees. — Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. Any tuition and fees set pursuant to this subsection are appropriated for use by the institution. Notwithstanding this subsection, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

(d) Information Technology. — Notwithstanding any other provision of law, the Board of Trustees of an institution shall establish policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at the institution. These policies and rules shall provide for security and encryption standards; software standards; hardware standards; acquisition of information technology consulting and contract services; disaster recovery standards; and standards for desktop and server computing, telecommunications, networking, video services, personal digital assistants, and other wireless technologies; and other information technology matters that are necessary and appropriate to fulfill the teaching, educational, research, extension, and service missions of the institution. The Board of Trustees shall submit all initial policies and rules adopted pursuant to this subsection to the Office of Information Technology Services for review upon adoption by the Board of Trustees. Any subsequent changes to these policies and rules adopted by the Board of Trustees shall be submitted to the Office of Information Technology Services for review. Any comments by the Office of Information Technology Services shall be submitted to the Chancellor of that institution. (2001-424, s. 31.11(a); 2006-66, s. 9.11(h); 2006-203, s. 4.1.)

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 31.11(b), provides: "In the event that G.S. 116-40.22 as enacted by this section [s. 31.11 of Session Laws 2001-424] and Section 15.6 of this act [s. 15.6 of Session Laws 2001-424] conflict, then the provisions of Section 15.6 [s. 15.6 of Session Laws 2001-424] control."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 4.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, rewrote the next-to-last sentence in subsection (c).

§ 116-40.23. Reporting requirement; effective date of reported policies, procedures, and rules.

The Board of Trustees of a special responsibility constituent institution authorized to have management flexibility under this Part shall report to the Board of Governors and to the Joint Legislative Education Oversight Committee any policies, procedures, and rules adopted pursuant to G.S. 116-40.22 prior to implementation. The report shall be submitted to both at least 30 days before the next regularly scheduled meeting of the Board of Governors and shall become effective immediately following that same meeting unless otherwise provided for by the Board of Trustees. Any subsequent changes to the policies, procedures, or rules adopted by the Board of Trustees pursuant to G.S. 116-40.22 shall be reported to the Board of Governors and to the Joint Legislative Education Oversight Committee in the same manner. Failure of the Board of Governors to accept, review, or otherwise consider the report submitted by the Board of Trustees shall not affect in any manner the effective date of the policies, procedures, and rules contained in the report. (2001-424, s. 31.11(a).)

§ 116-41: Repealed by Session Laws 1963, c. 448, s. 15.

Editor's Note. — G.S. 116-41 was formerly located under Part 3 of Article 1 of Chapter 116.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions.

As used in this Part:

(1) "Board" means the Board of Governors of the University of North Carolina;

(2) "Construction" means acquisition, construction, provision, reconstruction, replacement, extension, improvement or betterment, or any combination thereof;

(3) "Cost," as applied to a project, shall include the cost of construction (as herein defined), the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such construction, administrative expense and such other expenses, including reasonable provisions for initial operating expenses necessary or incident to the financing herein authorized and a reserve for debt service, and any expense incurred by the Board in the issuance of bonds under the provisions of this Part in connection with any of the foregoing items of cost;

(4) "Project" means any undertaking under this Part to acquire, construct or provide service and auxiliary facilities necessary or desirable for the proper and efficient operation of the University Enterprises,

either as additions, extensions, improvements or betterments to the University Enterprises or otherwise, including one or more or any combination of any system, facility, plant, works, instrumentality or other property used or useful:

a. In obtaining, conserving, treating or distributing water for domestic, industrial, sanitation, fire protection or any other public or private use;
b. For the collection, treatment, purification or disposal of sewage, refuse or wastes;
c. For the production, generation, transmission or distribution of gas, electricity or heat;
d. In providing communication facilities including telephone facilities;
e. In providing storage, service, repair and duplicating facilities;
f. In improving, extending or adding to the University Enterprises as herein defined; and
g. In providing other service and auxiliary facilities serving the needs of the students, the staff or the physical plant of the University; and including all plants, works, appurtenances, machinery, equipment and properties, both personal and real, used or useful in connection therewith;

and in the case of the telephone, electric and water systems comprising a part of the University Enterprises such additions, extensions, improvements or betterments thereof as may be necessary or desirable, in the discretion of the Board, to provide service from such systems, where it may be reasonably made available, within the environs of the University, including, without limitation, areas presently served by the University Enterprises in Orange, Durham and Chatham Counties.

(5) "Revenue bonds" or "bonds" means bonds of the University issued by the Board to pay the cost, in whole or in part, of any project pursuant to this Part and the bond resolution or resolutions of the Board; provided, however, that bonds, issued as a separate series which are stated to mature not later than 20 years from their date may be designated "revenue notes" or "notes";

(6) "Revenues" means the income and receipts derived by or for the account of the University through the charging and collection of service charges;

(7) "Service charges" means rates, fees, rentals or other charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project, or by any other service or auxiliary facility of the University, including the University Enterprises, any part of the income of which is pledged to the payment of the bonds or the interest thereon;

(8) "University" means the body politic and corporate known and distinguished by the corporate name of the "University of North Carolina" under G.S. 116-3;

(9) "University Enterprises" means the following existing facilities, systems, properties, plants, works and instrumentalities located in or near the Town of Chapel Hill, North Carolina, presently in the jurisdiction of and operated by the University; the telephone, electric, heating and water systems, the laundry, Carolina Inn, service and repair shops, the duplicating shop, bookstores and student supply stores, and rental housing properties for faculty members. (1961, c. 1078, s. 1; 1963, c. 448, s. 16; c. 944, s. 1; 1965, c. 1033, s. 1; 1971, c. 636; c. 1244, s. 16.)

Local Modification. — (As to Part 4) University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 4.

Cross References. — As to revenue bonds for student housing, see G.S. 116-175 through 116-185.

Editor's Note. — Session Laws 1983, c. 577, the Separation of Powers Bond Act of 1983, provided in s. 19: "Validation. All actions, appropriations, regulations or bonds taken, made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes or Part 10 of Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission."

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. Chapel Hill Tel. Co., 12 N.C. App. 543, 183 S.E.2d 802 (1971).

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

OPINIONS OF ATTORNEY GENERAL

Western Carolina University (WCU) is not a public utility subject to supervision by the Commission, except that, pursuant to G.S. 116-35, sales to the public of excess power must be "at a rate or rates approved by the Utilities Commission." See opinion of Attorney General to Mr. Myron L. Coulter, Chancellor, Western Carolina University, 55 N.C.A.G. 55 (1985).

§ 116-41.2. Powers of Board of Governors generally.

In addition to the powers which the Board now has, the Board shall have the following powers subject to the provisions of this Part and subject to agreements with the holders of any revenue bonds issued hereunder:

(1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;

(2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;

(3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body until January 1, 1973, and thereafter only by the North Carolina Utilities Commission) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the Board authorizing the issuance of the revenue bonds;

(4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;

(5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;

(6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the Board not to be required for any public purpose by the Board;

(7) To insure the payment of service charges with respect to the telephone, electric and water systems of the University Enterprises, as the same shall become due and payable, the Board may, in addition to any other remedies which it may have:
  a. Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent service charges, and
  b. At the expiration of 30 days after any such service charges become delinquent, discontinue supplying the services and facilities of such telephone, electric and water systems.

(8) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and

(9) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation, private or public, in connection with exercising the powers vested under this Part. (1961, c. 1078, s. 2; 1971, c. 634, s. 2; c. 636; c. 1244, s. 15.)

CASE NOTES

The Utilities Commission did not have jurisdiction to enter a regulatory order applicable to the telephone company operated by The University of North Carolina at Chapel Hill. State ex rel. Utilities Comm'n v. Chapel Hill Tel. Co., 12 N.C. App. 543, 183 S.E.2d 802 (1971).

§ 116-41.3. University authorized to pay service charges; payments deemed revenues.

The University is hereby authorized to pay service charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project or by any other service or auxiliary facility of the University, including the University Enterprises, and the income and receipts derive from such service charges paid by the University shall be deemed to be revenues under the provisions of this Part and shall be applied and accounted for in the same manner as other revenues. (1961, c. 1078, s. 3.)

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars ($3,500,000); provided, further, the Board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars ($3,500,000) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars ($13,000,000); provided, further, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1975, shall not exceed thirteen million dollars ($13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity at the option of the Board at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Part. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any notes issued under the provisions of this Part, all such notes shall be deemed to be negotiable instruments under the laws of this State. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds.

The resolution providing for the issuance of notes or bonds may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Notes may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bond anticipation notes issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such notes shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the notes.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Part, shall be deemed and construed to include the words "bond anticipation notes." (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236; 1971, c. 636; c. 1244, s. 15; 1973, c. 663; 1983, c. 577, s. 3; 1985 (Reg. Sess., 1986), c. 955, ss. 32, 33; 2006-203, s. 48.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 48, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last paragraph, which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries.

The Board in the resolution authorizing the issuance of bonds under this Part may provide for a pledge to the payment of such revenue bonds and the interest thereon of the revenue derived from the project and also for a pledge of the revenues derived from any system, facility, plant, works, instrumentalities or properties improved, bettered, or extended by the project or otherwise within the jurisdiction of or operated by the University in connection with the University of North Carolina at Chapel Hill, North Carolina, the revenues derived from any future improvements, betterments or extensions of the project, the revenues derived from the University Enterprises, or any part thereof, or the revenues from the project and any or all of the revenues mentioned in this sentence, without regard to whether the operations involved are deemed governmental or proprietary, it being the purpose hereof to vest in the Board broad powers which shall be liberally construed. So long as any revenues of the University mentioned in this paragraph are pledged for the payment of the principal of or interest on any bonds issued hereunder, such revenues shall be deposited in a special fund and shall be applied and used only as provided in the resolution authorizing such bonds, subject, however, to any prior pledge or encumbrance thereof.

The resolution authorizing the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the bonds, including covenants setting forth the duties of the University in relation to the construction of any project to be financed with the proceeds of said bonds, and to the maintenance, repair, operation and insurance of such project or any other project, systems, facilities, plants, works, instrumentalities, properties, the University Enterprises or any part thereof, if the revenues thereof are in any way pledged as security for the bonds; the fixing and revising of service charges and the collection thereof; and the custody, safeguarding and application of all moneys of the University pertaining to the project and the bonds, and all revenues pledged therefor. Notwithstanding the provisions of any other law, the Board may carry insurance on any such project in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. Such resolution may contain such other provisions in addition to the foregoing as the Board may deem reasonable and proper for the security of the bondholders.

The Board may provide for the payment of the proceeds of the bonds and any revenues pledged therefor to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of operation. (1961, c. 1078, s. 5; 1971, c. 1244, s. 15.)

§ 116-41.6. Pledge of revenues; lien.

All pledges of revenues under the provisions of this Part shall be valid and binding from the time such pledges are made. All such revenues so pledged shall immediately upon receipt thereof be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the University, irrespective of whether such parties have notice thereof. (1961, c. 1078, s. 6.)

§ 116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds.

The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this Part shall be deemed to be trust funds, to be held and applied solely as provided in this Part. The resolution authorizing the issuance of bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution may provide. (1961, c. 1078, s. 7.)

§ 116-41.8. Rights and remedies of bondholders.

Any holder of revenue bonds issued under the provisions of this Part or of any of the coupons appertaining thereto, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina, including this Part, or under such resolution, and may enforce and compel the performance of all duties required by this Part or by such resolution to be performed by the University or by any officer thereof or the Board, including the fixing, charging and collecting of service charges. (1961, c. 1078, s. 8; 1971, c. 1244, s. 15.)

§ 116-41.9. Refunding revenue bonds.

The University is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this Part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the combined purpose of

(1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this Part insofar as the same may be applicable. (1961, c. 1078, s. 9; 1983, c. 577, s. 4; 1985 (Reg. Sess.,1986), c. 955, ss. 34, 35; 2006-203, s. 49.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: 'Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 49, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former last paragraph, which read: "Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."

§ 116-41.10. Exemption from taxation.

The bonds issued under the provisions of this Part and the income therefrom shall at all times be free from taxation within the State. (1961, c. 1078, s. 10.)

§ 116-41.11. Executive committee may be authorized to exercise powers and functions of Board.

The Board by resolution may authorize its executive committee to exercise or perform any of the powers or functions vested in the Board under this Part. (1961, c. 1078, s. 11; 1971, c. 1244, s. 15.)

§ 116-41.12. Part provides supplemental and additional powers; compliance with other laws not required.

This Part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or refunding revenue bonds under the provisions of this Part need not comply with the requirements of any other law applicable to the issuance of bonds and provided, further, that all general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Part. (1961, c. 1078, s. 12.)

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.13. Distinguished Professors Endowment Trust Fund; establishment; maintenance.

The General Assembly of North Carolina recognizes that the public university system would be greatly strengthened by the addition of distinguished scholars. It further recognizes that private as well as State support is preferred in helping to obtain distinguished scholars for the State universities and that private support will help strengthen the commitment of citizens and organizations in promoting excellence throughout all State universities. It is the intent of the General Assembly to establish a trust fund to provide the opportunity to each State university to receive and match challenge grants to create endowments for selected distinguished professors to occupy chairs within the university. The associated foundations that serve the universities shall solicit and receive gifts from private sources to provide for matching funds to the trust fund challenge grants for the establishment of endowments for chairs within universities. (1985, c. 757, s. 202.)

Editor's Note. — Session Laws 2009-451, s. 9.16, provides: "Notwithstanding Part 4A of Article 1 of Chapter 116 of the General Statutes, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Distinguished Professors Endowment Trust Fund established in G.S. 116-41.14, the sum of eight million dollars ($8,000,000) for the 2009-2010 fiscal year and the sum of eight million dollars ($8,000,000) for the 2010-2011 fiscal year shall first be used to match the grant from the C.D. Spangler Foundation. The balance of funds remaining from each appropriation of eight million dollars ($8,000,000), if any, after matching the grant from the C.D. Spangler Foundation, shall be used to address the backlog of professorships awaiting State matching funds."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 116-41.13A. Distinguished Professors Endowment Trust Fund; definitions.

The following definitions apply in this Part:

(1) "Focused growth institution" means Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical University, North Carolina Central University, The University of North Carolina at Pembroke, Western Carolina University, and Winston-Salem State University.

(2) "Special needs institution" means the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," and The University of North Carolina at Asheville. (2003-293, s. 1; 2008-192, s. 6.)

Editor's Note. — Session Laws 2003-293, s. 4, which made this section effective July 1, 2003, originally enacted this section as G.S. 116-41.13.1. It was subsequently redesignated as G.S. 116-41.13A at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-192, s. 6, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" in subdivision (2).

§ 116-41.14. Distinguished Professors Endowment Trust Fund; establishment; maintenance.

There is established a Distinguished Professors Endowment Trust Fund to be maintained by the Board to provide challenge grants to the constituent institutions. All appropriated funds deposited into the trust fund shall be invested pursuant to G.S. 116-36. Interest income accruing to that portion of the trust fund not matched shall increase the total funds available for challenge grants. (1985, c. 757, s. 202.)

§ 116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.

(a) For constituent institutions other than focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one three hundred thirty-four thousand dollar ($334,000) challenge grant for each six hundred sixty-six thousand dollars ($666,000) raised from private sources; or

(2) On the basis of one one hundred sixty-seven thousand dollar ($167,000) challenge grant for each three hundred thirty-three thousand dollars ($333,000) raised from private sources; or

(3) On the basis of one challenge grant of up to six hundred sixty-seven thousand dollars ($667,000) for funds raised from private sources in twice the amount of the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision (1), subdivision (2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on the basis of two dollars of private funds for every one dollar of State funds.

(b) For focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

(1) On the basis of one five hundred thousand dollar ($500,000) challenge grant for each five hundred thousand dollars ($500,000) raised from private sources; or

(2) On the basis of one two hundred fifty thousand dollar ($250,000) challenge grant for each two hundred fifty thousand dollars ($250,000) raised from private sources; or

(3) On the basis of one challenge grant of up to one million dollars ($1,000,000) for funds raised from private sources in the same amount as the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision (1), subdivision (2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on the basis of one dollar of private funds for every dollar of State funds.

(c) Matching funds shall come from contributions made after July 1, 1985, and pledged for the purposes specified by G.S. 116-41.14. Each participating constituent institution's board of trustees shall establish its own Distinguished Professors Endowment Trust Fund, and shall maintain it pursuant to the provision of G.S. 116-36 to function as a depository for private contributions and for the State matching funds for the challenge grants. The State matching funds shall be transferred to the constituent institution's Endowment Fund upon notification that the institution has received and deposited the appropriate amount required by this section in its own Distinguished Professors Endowment Trust Fund. Only the net income from that account shall be expended in support of the distinguished professorship thereby created. (1985, c. 757, s. 202; 2003-293, s. 2; 2005-276, s. 9.21(a).)

§ 116-41.16. Distinguished Professors Endowment Trust Fund; contribution commitments.

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143C-4-5, and an initial payment of one hundred eleven thousand dollars ($111,000) to receive a grant described in G.S. 116-41.15(a)(1); or

(2) A commitment to make a donation of at least three hundred thirty-three thousand dollars ($333,000), as prescribed by G.S. 143C-4-5, and an initial payment of fifty-five thousand five hundred dollars ($55,500) to receive a grant described in G.S. 116-41.15(a)(2); or

(3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars ($666,000), as prescribed by G.S. 143-31.4 [G.S. 143C-4-5], and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3); and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

(1) A commitment to make a donation of at least five hundred thousand dollars ($500,000), as prescribed by G.S. 143C-4-5, and an initial payment of eighty-three thousand three hundred dollars ($83,300) to receive a grant described in G.S. 116-41.5(b)(1); or

(2) A commitment to make a donation of at least two hundred fifty thousand dollars ($250,000), as prescribed by G.S. 143C-4-5, and an initial payment of forty-one thousand six hundred dollars ($41,600) to receive a grant described in G.S. 116-41.15(b)(2); or

(3) A commitment to make a donation in excess of five hundred thousand dollars ($500,000), as prescribed by G.S. 143-31.4 [G.S. 143C-4-5], and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair. (1985, c. 757, s. 202; 2003-293, s. 3; 2005-276, s. 9.21(b); 2006-203, s. 50.)

Editor's Note. — The amendment to this section by Session Laws 2006-203, s. 50, was based on the section as it existed before the 2005 amendment, which added subdivisions (a)(3) and (b)(3). The bracketed references to "G.S. 143C-4-5" have been added in subdivisions (a)(3) and (b)(3) at the direction of the Revisor of Statutes.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 50, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-4-5" for "G.S. 143-31.4" throughout the section.

§ 116-41.17. Distinguished Professors Endowment Trust Fund; establishment of chairs.

When the sum of the challenge grant and matching funds in the Distinguished Professors Endowment Trust Fund reaches:

(1) One million dollars ($1,000,000), if the sum of funds described in G.S. 116-41.15(a)(1) or G.S. 116-41.15(b)(1); or

(2) Five hundred thousand dollars ($500,000), if the sum of funds described in G.S. 116-41.15(a)(2) or G.S. 116-41.15(b)(2); or

(3) An amount up to two million dollars ($2,000,000), if the sum of funds described in G.S. 116-41.15(a)(3) or G.S. 116-41.15(b)(3);

the board of trustees may recommend to the Board, for its approval, the establishment of an endowed chair or chairs. The Board, in considering whether to approve the recommendation, shall include in its consideration the programs already existing in The University of North Carolina. If the Board approves the recommendation, the chair or chairs shall be established. The chair or chairs, the property of the constituent institution, may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the board of trustees. (1985, c. 757, s. 202; 2005-276, s. 9.21(c).)

§ 116-41.18. Distinguished Professors Endowment Trust Fund; selection of Distinguished Professors.

(a) Each constituent institution that receives, through private gifts and an allocation by the Board of Governors, funds for the purpose shall, under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution, select a holder of the Distinguished Professorship. Once given, that designation shall be retained by the distinguished professor as long as he remains in the full-time service of the institution as a faculty member, or for more limited lengths of time when authorized by the Board of Governors and the board of trustees at the institution when the Distinguished Professorship is originally established or vacated. When a distinguished professorship becomes vacant, it shall remain assigned to the institution and another distinguished professor shall be selected under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution.

(a1) No rule shall prevent the constituent institutions of The University of North Carolina from selecting holders of Distinguished Professorships from among existing faculty members or newly hired faculty members.

(b) The Board of Governors of The University of North Carolina shall promulgate rules to implement this section.

(c) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of two million dollars ($2,000,000) for fiscal year 1985-86, and the sum of two million dollars ($2,000,000) for fiscal year 1986-87, to implement this section. (1985, c. 757, s. 202; 1991 (Reg. Sess., 1992), c. 1030, s. 31; 1995, c. 507, s. 15.12; 1997-443, s. 10.6.)

§ 116-41.19. Distinguished Professors Endowment Trust Fund; promulgation of rules.

The Board of Governors of The University of North Carolina shall promulgate rules to implement this Part. (1985, c. 757, s. 202.)

Part 5. Miscellaneous Provisions.

§§ 116-42 through 116-42.4: Repealed by Session Laws 1973, c. 495, s. 2.

Editor's Note. — Session Laws 1973, c. 495, ss. 3 and 5, provided: "Sec. 3. All ordinances, rules, and regulations adopted before the effective date of this act, under authority of G.S. 116-42, 116-42.1, 116-42.2, 116-42.3 and 116-42.4, as those sections read immediately before the effective date of this act, shall remain in full force and effect until altered pursuant to authority conferred by this act."

§ 116-43. Escheat receipts prior to July 1, 1971.

All property that has heretofore escheated to the University of North Carolina, and all interest and earnings thereon, shall be set apart by the Board of Governors of the University for the six member campuses of the University of North Carolina as constituted on June 30, 1971, so that the interest and earnings from said fund shall be used for maintenance and/or for scholarships and loan funds for worthy and needy students, residents of the State, attending the member campuses of the University of North Carolina as constituted on June 30, 1971, under such rules and regulations as shall be adopted by the Board of Governors. (1874-5, c. 236, s. 2; Code, s. 2630; Rev., s. 4285; C.S., s. 5787; 1947, c. 614, s. 4; 1953, c. 1202, s. 3; 1971, c. 1244, s. 17.)

§ 116-43.1. Institute for Transportation Research and Education.

The Board of Governors of the University of North Carolina is authorized to establish an Institute for Transportation Research and Education to facilitate the development of a broad program of transportation research and education involving other organizations and institutions which have related programs. The immediate purpose of the Institute shall be to create a management structure to coordinate and eventually merge the Highway Safety Programs of the National Driving Center and the North Carolina Highway Safety Research Center. The Board of Governors of the University of North Carolina is further authorized to establish a Council for Transportation Research and Education to represent all interests in transportation research and education, including but not limited to transportation safety. (1975, 2nd Sess., c. 983, s. 57.)

Editor's Note. — Session Laws 1977, c. 1029, s. 2, provided: "The land acquired, the building erected, and the furnishings and equipment acquired at State expense for the National Driving Center, Incorporated, pursuant to Session Laws 1973, Chapter 617, are transferred to the Board of Governors of the University of North Carolina. This transfer shall take effect notwithstanding any existing conflicting action or policy of the Department of Administration or of the Council of State, and notwithstanding any existing conflicting provision of law."

§ 116-43.5. State grants to aid eligible students attending certain private institutions of higher education; administrative procedure.

(a) Definitions. — The following definitions apply in this section:

(1) "Institution" means a nonprofit educational institution with a main permanent campus located in this State that satisfies all of the following:

a. Is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof.

b. Is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association.

c. Awards a postsecondary degree as defined in G.S. 116-15.

d. Its students are not eligible for a similar State grant under another State program.

(1a) "Licensure student" means a person who:

a. Has a bachelor's degree;

b. Is enrolled either full-time or less than full-time in a program intended to result in licensure in teaching or nursing;

c. Attends an institution located in the State; and

d. Qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board.

(2) "Main permanent campus" means a campus that is owned by the institution that provides permanent on-premises housing, food services, and classrooms with full-time faculty members and administration that engage in postsecondary degree activity as defined in G.S. 116-15.

(3) "Student" means a person enrolled in and attending an institution located in the State (i) who qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board, and (ii) who has not received a bachelors degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of The University of North Carolina may promulgate. Qualification for in-State tuition under G.S. 116-143.3 makes a person a "student" as defined in this subdivision.

(b) Eligibility of Students. — A student is eligible for a State grant under this section for an academic year if the student is a North Carolina undergraduate student attending an institution as defined by this section and is not eligible for a similar State grant under another State program for the same academic year. A full-time North Carolina undergraduate student shall be eligible for the full amount of the State grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least nine hours of academic credit per semester shall be eligible for a State grant under this section calculated on a pro rata basis.

(b1) Eligibility of Licensure Students. — Each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing shall also be eligible for the State grant provided by this section. The State grant provided by this section shall be paid on a pro rata basis to any part-time licensure student who is enrolled to take at least nine hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The State grant and prorated State grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(c) Administration. — The State grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall pay the State grant to each student eligible under this section. The amount of the grant shall be determined by the General Assembly. The State grant shall be paid to a student only after the student completes the academic year. The grant shall be paid directly to the student on or after July 1 following the completion of the academic year. The State Education Assistance Authority shall not remit any grant until it receives proper certification from an institution that the student applying for the grant is an eligible student.

(d) Shortfall. — In the event there are not sufficient funds to provide each eligible student with a full grant or prorated grant:

(1) Each full-time student or full-time licensure student eligible for a full grant under this section shall receive a pro rata share of funds for the full grant then available for the appropriate academic year within the fiscal period covered by the current appropriation.

(2) Each part-time student or part-time licensure student eligible for a prorated grant under this section shall receive a pro rata share of the funds for the prorated grant then available for the appropriate academic year within the fiscal period covered by the current appropriation.

(e) Reversion. — Any remaining funds shall revert to the General Fund.

(f) Reduction of Grant Amount for Certain Students. — A State grant authorized by this act shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours.

(f1) Student and Licensure Student Enrollment Documented. — The State Education Assistance Authority shall document the number of full-time equivalent and part-time North Carolina undergraduate students and the number of licensure students that are enrolled in private institutions and the State funds collected by students and licensure students at each institution under this section. The State Education Assistance Authority shall report those findings to the Secretary of Administration, the House and Senate Appropriations Subcommittees on Education, and the Joint Legislative Education Oversight Committee.

(g) Limitation on Expenditures. — The State grant shall not be used for any student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years. (2003-429, s. 1; 2007-323, s. 9.13(b).)

Local Modification. — Cabarrus College of Health Sciences: 2007-113, s. 1(b), as amended by 2007-484, s. 41.

Editor's Note. — Session Laws 2003-429, s. 2, made this section effective July 1, 2003, and applicable to the 2003-2004 academic year and each year thereafter.

§ 116-43.10. Academic Common Market program.

(a) The Southern Regional Education Board operates an Academic Common Market program. Under this program, qualified students from participating states may apply to attend programs at public universities in participating states that are not available in their home state's university system. North Carolina's participation for graduate programs provides a cost-effective means of offering educational access for North Carolina residents. North Carolinians are able to attend graduate programs that are not available at The University of North Carolina at reduced rates, and the State avoids the cost associated with the development of new academic programs.

(b) The Board of Governors of The University of North Carolina may continue participation in the Southern Regional Education Board's Academic Common Market at the graduate program level. The Board of Governors shall examine the graduate programs offered in The University of North Carolina System and select for participation only those graduate programs that are likely to be unique or are not commonly available in other Southern Regional Education Board states. Out-of-state tuition shall be waived for students who are residents of other Southern Regional Education Board states and who are participating in the Academic Common Market program. If accepted into The University of North Carolina graduate programs that are part of the Academic Common Market, these students shall pay in-State tuition and shall be treated for all purposes of The University of North Carolina as residents of North Carolina.

(c) Once a student is enrolled in The University of North Carolina System under the Academic Common Market program, the student shall be entitled to pay in-State tuition as long as the student is enrolled in that graduate program. The Board of Governors shall provide a report on the Academic Common Market program to the Joint Legislative Education Oversight Committee by September 2007 and each biennium thereafter. (2005-276, s. 9.24.)

§ 116-43.15. Use of college or university facilities by public school students pursuant to cooperative programs.

The existing facilities of any constituent institution of The University of North Carolina and the existing facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with the North Carolina State Building Code and applicable local ordinances for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new facilities of any constituent institution of The University of North Carolina and new facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with the North Carolina State Building Code and applicable local ordinances for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered "Business — Group B" in the same manner as other college and university uses. (2006-66, s. 8.11(b); 2006-221, s. 5; 2009-305, s. 5.)

Editor's Note. — Session Laws 2006-221, s. 28, made this section effective July 1, 2006.

Session Laws 2006-66, s. 8.11(b), as added by Session Laws 2006-221, s. 5, effective July 1, 2006, enacted this section as G.S. 116-44.5. It was recodified as G.S. 116-43.15 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-305, s. 5, effective July 17, 2009, rewrote this section.

§ 116-44: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-44.1: Transferred to G.S. 116-42 by Session Laws 1971, c. 1244, s. 11.

§ 116-44.2: Transferred to G.S. 116-38 by Session Laws 1971, c. 1244, s. 7.

Part 6. Traffic and Parking.

§ 116-44.3. Definitions.

Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this Part:

(1) "Board of trustees" and "constituent institution" have the meanings assigned in G.S. 116-2.

(2) "Campus" means that University property, without regard to location, which is used wholly or partly for the purposes of a particular constituent institution of the University of North Carolina.

(3) "University" means a constituent institution as defined in G.S. 116-2.

(4) "University property" means property that is owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Governors of the University of North Carolina. (1973, c. 495, s. 1.)

Cross References. — See Editor's note to G.S. 116-42 to 116-42.4.

§ 116-44.4. Regulation of traffic and parking and registration of motor vehicles.

(a) Except as otherwise provided in this Part, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structures on University property. Nothing in this section modifies any rights of ownership or control of University property, now or hereafter vested in the Board of Governors of the University of North Carolina or the State of North Carolina.

(b) Each board of trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the board of trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the board of trustees. The board of trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this Part.

(c) Each board of trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the University, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(d) Each board of trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the University and members of the general public attending schools, conferences, or meetings at the University, visiting or making use of any University facilities, or attending to official business with the University. The board of trustees may issue permits to park in these lots and garages and may charge a fee therefor. The board of trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle. No permit to park shall be issued until the student requesting the permit provides the name of the insurer, the policy number under which the student has financial responsibility, and the student certifies that the motor vehicle is insured at the levels set in G.S. 20-279.1(11) or higher. This subsection applies to motor vehicles that are registered in other states as well as motor vehicles that are registered in this State pursuant to Chapter 20 of the General Statutes.

(e) Each board of trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the board of trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The board of trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(f) The board of trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(g) Violation of an ordinance adopted under any portion of this Part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than fifty dollars ($50.00). An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance.

(h) An ordinance adopted under any portion of this Part may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. Each board of trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The board of trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the University.

(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether a constituent institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,
c. Provide for an appeal to district court from that hearing,
d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
e. If the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it.

(j) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the board of trustees is prima facie evidence that the vehicle was parked by:

(1) The person holding a University parking permit for the vehicle, or
(2) If no University parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the University pursuant to subsection (c), or
(3) If no University parking permit has been issued for the vehicle and the vehicle is not registered with the University, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the board of trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(k) Each board of trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(*l*) All ordinances adopted under this Part shall be recorded in the minutes of the board of trustees and copies thereof shall be filed in the offices of the President of the University of North Carolina and the Secretary of State. Each board of trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(m) All moneys received pursuant to this Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution, are appropriated, and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;
(2) To develop, maintain, and supervise parking areas and facilities;
(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;
(5) Other purposes related to parking, traffic, and transportation on the campus.

The clear proceeds of all civil penalties collected pursuant to subsection (h) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 495, s. 1; 1975, c. 716, s. 5; 1981 (Reg. Sess., 1982), c. 1239, s. 3; 1983, c. 420, s. 5; 1985, c. 764, s. 36; 2001-336, s. 1; 2005-276, s. 6.37(r); 2006-203, s. 51.)

Editor's Note. — The references to G.S. 20-141(f1) and (g2) in subsection (b) of this section are to subsections existing prior to the 1973 amendment of G.S. 20-141.

Session Laws 2005-276, s. 6.37(w), provides: "The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by

State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 51, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "institution, are appropriated" for "institution" in subsection (m).

CASE NOTES

Because the North Carolina General Assembly enacted G.S. 116-44.4 pursuant to a clear grant of constitutional authority to establish a mechanism for administering the "maintenance and management" of traffic and parking on each University of North Carolina campus, G.S. 116-44.4 is constitutional under N.C. Const. art. IX, § 8, which is a co-equal provision with N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Proceeds of penalties that are collected for violation of campus traffic and parking ordinances as "infractions" under G.S. 116-44.4(g) are subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

"Civil penalties" imposed by G.S. 116-44.4(h), which are intended to compensate campuses for the expense of establishing and maintaining parking-and transportation-related services, are remedial in nature and thus are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

§ 116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina.

In addition to the powers granted by G.S. 116-44.4, the board of trustees of each of the constituent institutions enumerated hereinafter shall have the additional powers prescribed:

(1) The Board of Trustees of the University of North Carolina at Chapel Hill may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the Town of Chapel Hill where parking is not prohibited by an ordinance of the Town of Chapel Hill:

a. Battle Lane;
b. Country Club Road, between Raleigh Street and South Road;
c. Manning Drive;
d. McCauley Street, between Columbia Street and Pittsboro Street;
e. Pittsboro Street, between South Columbia Street and Cameron Avenue;
f. Boundary Street, between Country Club Road and East Franklin Street;
g. Park Place, between Boundary Street and East Franklin Street;
h. South Columbia Street, between Franklin Street and Manning Drive;
i. Cameron Avenue, between South Columbia Street and Raleigh Street;
j. Raleigh Street;
k. Ridge Road;
l. South Road, between Columbia Street and Country Club Road.

In addition, the Board of Trustees of the University of North Carolina at Chapel Hill may regulate traffic on Cameron Avenue, between Raleigh Street and South Columbia Street, and on Raleigh Street, in any manner not inconsistent with ordinances of the Town of Chapel Hill.

(2) The Board of Trustees of Appalachian State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the Town of Boone where parking is not prohibited by an ordinance of the Town of Boone:
  a. Rivers Street, between U.S. 221-U.S. 321 (Hardin Street) and Water Street;
  b. Stadium Drive, between Rivers Street and Hemlock Drive;
  c. College Street, to the extent that it is bounded on both sides by the university campus;
  d. Appalachian Street, between Locust Street and Howard Street;
  e. Brown Street, between Locust Street and Howard Street;
  f. Hill Street, only on the half of Hill Street bounded by the university campus;
  g. Stansberry Circle, from Holmes Drive to the end of Stansberry Circle;
  h. Locust Street, from U.S. 221-U.S. 321 (Hardin Street) to the end of Locust Street; and
  i. Dale Street, from State Farm Road to the end of Dale Street.

(3) The Board of Trustees of the University of North Carolina at Charlotte may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public roads in the County of Mecklenburg where parking is not prohibited by ordinance or other source of legal regulation of the County of Mecklenburg or other governmental entity with jurisdiction to regulate parking on such public road:
  a. Mary Alexander Boulevard (State Road No. 2834), between its intersection with N.C. Highway 49 and its intersection with Mallard Creek Church Road.

In addition, the Board of Trustees of the University of North Carolina at Charlotte may regulate traffic on Mary Alexander Boulevard (State Road No. 2834), between its intersection with N.C. Highway 49 and its intersection with Mallard Creek Church Road, in any manner not inconsistent with any ordinances or other sources of legal regulation of the County of Mecklenburg or other governmental entity with jurisdiction to regulate traffic on such public road.

(3a) The Board of Trustees of the University of North Carolina at Wilmington may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the City of Wilmington where parking is not prohibited by an ordinance of the City of Wilmington:
  a. “H” Street.

(3b) The Board of Trustees of the University of North Carolina at Greensboro may by ordinance prohibit, regulate, and limit the parking of motor vehicles for those portions of any of the following public streets in the City of Greensboro where parking is not prohibited by an ordinance of the City of Greensboro:
  a. Forest Street between Oakland Avenue and Spring Garden Street.
  b. Highland Avenue between Oakland Avenue and Spring Garden Street.
  c. Jefferson Street between Spring Garden Street and the Walker/Aycock parking lot.

d. Kenilworth Street between Oakland Avenue and Walker Avenue.
e. McIver Street between Walker Avenue and West Market Street.
f. Stirling Street between Oakland Avenue and Walker Avenue.
g. Theta Street between Kenilworth Street and Stirling Street.
h. Walker Avenue between Aycock Street and Jackson Library and between Tate Street and McIver Street.

(3c) The Board of Trustees of North Carolina Agricultural and Technical State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following streets in the City of Greensboro where parking is not prohibited by an ordinance of the City of Greensboro:
a. Dudley Street between Market Street and Bluford Street.
b. Bluford Street between Regan Street and Luther Street.
c. Laurel Street between Lindsay Street and East Market Street.
d. Benbow Road between Sullivan Street and East Market Street.
e. Sullivan Street between O'Henry Boulevard overpass and Lindsay Street.
f. Beech Street between Bluford Street and Lindsay Street.
g. Obermeyer Street between Bluford Street and Market Street.
h. Daniel Street between Bluford Street and Market Street.
i. Nocho Street between Bluford Street and Market Street.

In addition, the Board of Trustees of North Carolina A&T State University may regulate traffic on the following streets for the portion of those streets that abut the university: Benbow Road, Dudley Street, Lindsay Street, and Market Street, provided that the regulation is not inconsistent with ordinances of the City of Greensboro.

(4) This section does not diminish the authority of any affected municipality, county or other governmental entity to prohibit parking on any public street or road listed herein. It is intended only to authorize the respective boards of trustees of the constituent institutions identified hereinabove to further prohibit, regulate, and limit parking on certain public streets and roads running through or adjacent to the campuses of the constituent institutions where parking is not prohibited by ordinance or other law of any affected municipality, county or other governmental entity. When an ordinance or other law of an affected municipality, county or other governmental entity is adopted to prohibit parking on any portion of any public street or road then regulated by an ordinance of a board of trustees, the ordinance of the board of trustees is superseded and the University, upon request of the municipality, county or other governmental entity, shall immediately remove any signs, devices, or markings erected or placed by the University on that portion of the street or road pursuant to the superseded ordinance. (1973, c. 495, s. 1; 1979, c. 238; 2001-170, s. 1; 2003-213, s. 1; 2005-165, s. 1.)

Part 7. Fire Safety.

§ 116-44.6. Definitions.

Unless the context clearly requires another meaning, the following definitions apply in this Part:

(1) Fraternity or sorority. — A social, professional, or educational incorporated organization that, by official recognition, is affiliated or identified with a public or nonpublic institution of higher education in this State and which maintains a living facility that provides accom-

modations for five or more students enrolled at the recognition-granting institution of higher education.

(2) Fund. — The Fire Safety Loan Fund authorized by this Part.

(3) Living facility. — A sleeping facility capable of overnight accommodation and other capabilities which support continuous occupancy.

(4) Residence hall. — A living facility maintained by a public or nonpublic institution of higher education in North Carolina or by the North Carolina School of Science and Mathematics for use by enrolled students.

(5) Supplemental fire safety protection system. — A water system capability which is sized to accommodate the added water supply pressure and volume required for building fire protection.

(6) Water system. —
  a. A city, county, or sanitary district; or
  b. A water and sewer authority, a metropolitan water district, or county water and sewer district, established pursuant to Chapter 162A of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

§ 116-44.7. Exemption from certain fees and charges.

No water system serving a residence hall or fraternity or sorority housing shall levy or collect any water-meter fee, water-hydrant fee, tap fee, or similar service fee on a residence hall or fraternity or sorority house with respect to supporting a supplemental fire safety protection system in excess of the marginal cost to the water system to support the fire safety protection system. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a); 1997-443, s. 10.14.)

§ 116-44.8. Fire Safety Loan Fund.

(a) There is established the Fire Safety Loan Fund. The Fund shall be a revolving loan fund for installing fire safety equipment and systems in fraternity and sorority housing.

(b) The Fund shall be administered by the Office of the State Treasurer, and that office may establish the policies and procedures that it deems appropriate for the operation of the Fund. The Office of the State Treasurer may enlist the assistance of other State departments or entities which have expertise that would be useful in administering the Fund, and those State departments or entities shall provide the assistance requested.

(c) The Fund shall be operated on a revolving basis with proceeds from the repayment of prior loans being made available for subsequent loans.

(d) Loans from the Fund shall be secured by a first or second mortgage or other pledge. Loans shall be made for a period not to exceed 10 years. Interest shall not be charged on loans from the Fund. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

§ 116-44.9: Reserved for future codification purposes.

Article 1A.

Regional Universities.

§§ 116-44.10 through 116-44.16: Repealed by Session Laws 1971, c. 1244, s. 1.

ARTICLE 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

§ **116-45:** Repealed by Session Laws 1971, c. 1244, s. 1.

§ **116-45.1:** Repealed by Session Laws 1969, c. 801, s. 7.

§ **116-45.2:** Repealed by Session Laws 1969, c. 297, s. 6.

§ **116-46:** Repealed by Session Laws 1971, c. 1244, s. 1.

§ **116-46.1:** Transferred to G.S. 116-42.1 by Session Laws 1971, c. 1244, s. 11.

§ **116-46.1A:** Transferred to G.S. 116-42.2 by Session Laws 1971, c. 1244, s. 11.

§ **116-46.1B:** Transferred to G.S. 116-42.3 by Session Laws 1971, c. 1244, s. 11.

§ **116-46.2:** Transferred to G.S. 116-17 by Session Laws 1971, c. 1244, s. 3.

§§ **116-46.3, 116-46.4:** Transferred to G.S. 116-40.3 and 116-40.4 by Session Laws 1971, c. 1244, s. 10.

ARTICLE 3.

Community Colleges.

§§ **116-47 through 116-62.1:** Repealed by Session Laws 1991, c. 542, s. 2.

Cross References. — As to current provisions relating to community colleges, see Chapter 115D.

ARTICLE 4.

University of North Carolina School of the Arts.

§ 116-63. Policy.

It is hereby declared to be the policy of the State to foster, encourage and promote, and to provide assistance for, the cultural development of the citizens of North Carolina, and to this end the General Assembly does create and provide for a training center for instruction in the performing arts. (1963, c. 1116.)

Editor's Note. — Session Laws 2008-192, s. 13(a), provides: "All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of the North Carolina School of the Arts remain those of the University of North Carolina School of the Arts."

Session Laws 2008-192, s. 13(b), provides: "Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina School of the Arts, as they existed prior to the enactment of this act. The University of North Carolina School of the Arts shall use funds within its budget to replace these items, as necessary."

§ 116-64. Establishment of school.

There is hereby established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the State, to serve the students of North Carolina and other states, particularly other states of the South. The school shall be designated the "North Carolina School of the Arts, redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts.'" (1963, c. 1116; 1971, c. 1244, s. 13; 2008-192, s. 7.)

Effect of Amendments. — Session Laws 2008-192, s. 7, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" at the end of the paragraph.

§ 116-65. To be part of University of North Carolina; membership of Board of Trustees.

The North Carolina School of Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," is a part of the University of North Carolina and subject to the provisions of Article 1, Chapter 116, of the General Statutes; provided, however, that notwithstanding the provisions of G.S. 116-31, the Board of Trustees of said school shall consist of 15 persons, 13 of whom are selected in accordance with provisions of G.S. 116-31, and the conductor of the North Carolina Symphony, or the conductor's designee, and the Secretary of the Department of Cultural Resources, both serving ex officio and nonvoting. (1963, c. 1116; 1971, c. 320, s. 4; c. 1244, s. 13; 1979, c. 562; 2003-215, s. 1; 2008-192, s. 8.)

Effect of Amendments. — Session Laws 2008-192, s. 8, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the beginning of the section.

§ 116-66. Powers of various boards.

The Board of Governors of the University of North Carolina and the Board of Trustees of the school shall be advised and assisted by the State Board of Education. Entrance requirements shall be prescribed so that the professional training offered shall be available only to those students who possess exceptional talent in the performing arts. In developing curricula the school shall utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction as may be needed by the students of the school, and, in the discretion of the Board of Governors, personnel may be employed jointly with any such institution or unit on a cooperative, cost-sharing basis. Curricula below the collegiate level shall be developed with the advice and approval of the State Board of Education. The school shall confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists. The chancellor of the school shall preferably be a noted composer or dramatist. (1963, c. 1116; 1971, c. 1244, s. 13; 1985, c. 101, s. 2.)

§ 116-67: Repealed by Session Laws 1985, c. 101, s. 1.

§ 116-68. Endowment fund.

The Board of Trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Article 1, Chapter 116, of the General Statutes. The proceeds in this fund are appropriated as provided by G.S. 116-36. (1963, c. 1116; 1971, c. 1244, s. 13; 2006-203, s. 51.1.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 51.1, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added the last sentence.

§ 116-69. Purpose of school program.

The primary purpose of the school shall be the professional training, as distinguished from liberal arts instruction, of talented students in the fields of music, drama, the dance, and allied performing arts, at both the high school and college levels of instruction, with emphasis placed upon performance of the arts, and not upon academic studies of the arts. The said school may also offer high school and college instruction in academic subjects, and such other programs as are deemed necessary to meet the needs of its students and of the State, consistent with appropriations made and gifts received therefor, and may cooperate, if it chooses, with other schools which provide such courses of instruction. The school, on occasion, may accept elementary grade students of rare talent, and shall arrange for such students, in cooperation with an elementary school, a suitable educational program. (1963, c. 1116.)

§ 116-69.1. Display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance.

The school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. The school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (2006-137, s. 3.)

Cross References. — As to state salute to the North Carolina flag, G.S. 144-8.

Editor's Note. — Session Laws 2006-137, s. 3, made this section effective July 19, 2006.

§§ 116-70, 116-70.1: Repealed by Session Laws 1971, c. 1244, s. 13.

Article 5.

Loan Fund for Prospective College Teachers.

§ 116-71. Purpose of Article.

The purpose of this Article is to encourage, assist, and expedite the postgraduate-level education and training of competent teachers for the public and private universities, colleges and community colleges in this State by the granting of loans to finance such study. The funds shall be used to increase the number of teaching faculty as distinguished from research specialists. (1965, c. 1148, s. 1; 1987, c. 564, s. 22.)

§ 116-72. Fund established.

There is established a loan fund for prospective college teachers to assist capable persons to pursue study and training leading to masters or doctorate degrees in preparation to become teachers in the public and private institutions of education beyond the high school in North Carolina. Both private and public sources may be solicited in the creation of the fund. (1965, c. 1148, s. 1.)

§ 116-73. Joint committee for administration of fund; rules and regulations.

"The Scholarship Loan Fund for Prospective College Teachers" shall be the responsibility of the Board of Governors of the University of North Carolina and the State Board of Education and will be administered by them through a joint committee, "The College Scholarship Loan Committee." This Committee will operate under the following rules and regulations and under such further rules and regulations as the Board of Governors of the University of North Carolina and the State Board of Education shall jointly promulgate.

(1) The nomination of applicants and recommendations of renewals shall be the responsibility of the College Scholarship Loan Committee.

(2) Loans should be made for a single academic year (nine months) with renewal possible for two successive years for students successfully pursuing masters or doctoral programs. Loans shall not exceed two thousand dollars ($2,000) for single students and three thousand dollars ($3,000) for married students.

(3) All scholarship loans shall be evidenced by notes, with sufficient sureties, made payable to the State Board of Education, and shall bear interest at the rate of four percent (4%) per annum from and after September 1 following the awarding of the candidate's degree.

(4) Recipients of loans may have them repaid by teaching in a college or other educational institution beyond the high school level in North Carolina upon completion of their masters or doctorate degree program, at the rate of one hundred dollars ($100.00) per month for each month of such teaching. If a student supported by a loan in this program should fail to so teach in a North Carolina institution, the loan would become repayable to the State, with interest, for that part of the teaching commitment not met, said note to be repaid according to the terms thereof.

(5) Loans for 12 weeks of summer study, carrying stipends not to exceed five hundred dollars ($500.00) for single and married students, should

be available to students who do not plan to attend postgraduate school as full-time students during the regular academic year. Recipients should be eligible for up to three renewals over a four-year period. The obligation to teach in a North Carolina college or other educational institution, or failing that, to repay the State, shall apply proportionally as indicated above. (1965, c. 1148, s. 1; 1971, c. 1244, s. 14.)

§ 116-74. Duration of fund; use of repaid loans and interest.

The Scholarship Loan Fund for Prospective College Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina. Such amounts of loans as shall be repaid from time to time under the provisions of this Article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said loan fund. These funds shall be administered for the same purposes and under the same provisions as are set forth herein to the end that they may be utilized in addition to such further amounts as may be privately donated or appropriated from time to time by public or corporate bodies. (1965, c. 1148, s. 1.)

§§ 116-74.1 through 116-74.5: Reserved for future codification purposes.

Article 5A.

Center for Advancement of Teaching.

§ 116-74.6: Recodified as G.S. 115C-296.5 by Session Laws 2009-451, s. 9.13(b), effective July 1, 2009.

Editor's Note. — Session Laws 2009-451, s. 9.13(a), provides: "The North Carolina Center for the Advancement of Teaching (NCCAT) is transferred from the Board of Governors of The University of North Carolina to the State Board of Education. The Center shall be located administratively under the State Board of Education but shall exercise its powers and duties through its own board of trustees. The board of trustees shall have full authority regarding all aspects of employment and contracts for the North Carolina Center for the Advancement of Teaching in accordance with State personnel policies and contract procedures.

"This transfer shall include (i) ownership, possession, and control of its properties located at Cullowhee and Ocracoke, including buildings, grounds, personal property, vehicles, and equipment and (ii) the resources, assets, liabilities, and operations maintained, possessed, or controlled by the North Carolina Center for the Advancement of Teaching prior to the transfer.

"Upon the transfer, all duties and responsibilities of The University of North Carolina regarding NCCAT, including Western Carolina University, shall cease except as may be agreed upon by The University of North Carolina, Western Carolina University, the State Board of Eduation, and NCCAT; provided, however, that these parties shall work cooperatively in coordination with appropriate State agencies to effect an efficient and orderly transfer of duties and responsibilities to be completed on or before November 1, 2009.

"The State shall reallocate to Western Carolina University the land grant that is the original parcel of NCCAT real property located in Cullowhee if it is no longer used or occupied by NCCAT."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 116-74.7: Recodified as G.S. 115C-296.6 by Session Laws 2009-451, s. 9.13(d), effective July 1, 2009.

§§ 116-74.8 through 116-74.20: Reserved for future codification purposes.

ARTICLE 5B.

School Administrator Training Programs.

§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than 12 school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of the biennium and report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1 annually.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

(e) Repealed by Session Laws 2005-276, s. 9.23, effective July 1, 2005. (1993, c. 199, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 13; 1995, c. 507, s. 27.2(a); 1998-212, s. 11.13(a); 2001-424, s. 31.10(a); 2005-276, s. 9.23.)

Editor's Note. — Session Laws 1993, c. 199, which enacted this article, in s. 8 provided that Sections 5 and 7 of this act would not become effective unless sufficient funds were appropriated for this purpose. However, this contingency was removed by Session Laws 1993, c. 321, s. 317. Session Laws 1993, c. 199, s. 8 further provides: "Nothing in this act shall require the General Assembly to appropriate any funds to implement it."

At the direction of the Revisor of Statutes, Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 13 has been codified as subsection (e).

Session Laws 1995, c. 507, s. 27.2(b), provides: "The Board of Governors of The University of North Carolina shall continue the Master of School Administrators program at Appalachian State University as one of the eight school administrator programs established pursuant to G.S. 116-74.21."

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1998-212, s. 1.1, provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 11.13(b), provides that the Board of Governors of The University of North Carolina shall include the Master of School Administration program at North Carolina State University in Raleigh as one of the nine school administrator programs established pursuant to this section. In providing this program, North Carolina State University shall cooperate with North Carolina Central University and the University of North Carolina at Chapel Hill through the use of distance education methodologies and sharing of faculty expertise.

Session Laws 1998-212, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year."

Session Laws 1998-212, s. 30.5, contains a severability clause.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 31.10(b), provides: "(b) The Board of Governors of The University of North Carolina shall include the Master of School Administration program at North Carolina Agricultural and Technical State University in Greensboro, North Carolina Central University in Durham, and the University of North Carolina at Pembroke as three of the 12 school administrator programs established pursuant to G.S. 116-74.21. These three programs shall be comparable in quality to the nine existing Master of School Administration programs and shall be operated within existing funds."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

§§ 116-74.22 through 116-74.40: Reserved for future codification purposes.

ARTICLE 5C.

North Carolina Principal Fellows Program.

§ 116-74.41. North Carolina Principal Fellows Commission established; membership.

(a) There is established the North Carolina Principal Fellows Commission. The Commission shall exercise its powers and duties independently of the Board of Governors of The University of North Carolina. The Director of the Principal Fellows Program shall staff the Commission. The State Education Assistance Authority (SEAA) as created in G.S. 116-203 shall be responsible for implementing scholarship loan agreements, monitoring, cancelling through service, collecting and otherwise enforcing the agreements for the Principal Fellows Program scholarship loans established in accordance with G.S. 116-74.42.

(a1) All funds appropriated to, or otherwise received by, the Principal Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall be placed in an institutional trust fund pursuant to G.S. 116-36.1.

(b) The Commission shall consist of 12 members appointed as follows:

(1) One member of the Board of Governors of The University of North Carolina appointed by the chair of that board, notwithstanding G.S. 116-7(b).

(2) One member of the State Board of Education appointed by the State Board chair.

(3) Two deans of schools of education appointed by the President of The University of North Carolina.
(4) One public school teacher appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
(5) One public school principal appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
(6) A local superintendent chosen by the State Superintendent of Public Instruction.
(7) One member to represent business and industry appointed by the Governor.
(8) One local school board member appointed by the chair of the State Board of Education.
(9) One parent of a public school child appointed by the State Superintendent of Public Instruction.
(10) The chairperson of the Board of the State Education Assistance Authority.
(11) The director of the Principal Fellows Program. The director shall chair the Commission.

(c) Initial appointments shall be made no later than September 15, 1993. Initial terms of those members appointed to fill the teacher, principal, parent, superintendent, and the local school board member seats shall expire July 1, 1995. Initial terms of those members appointed to fill the Board of Governors of The University of North Carolina, State Board of Education, deans of schools of education, and the member of business and industry seats shall expire July 1, 1997. Thereafter, all appointments for these seats shall be for four-year terms.

(d) Except as otherwise provided, if a vacancy occurs in the membership, the appointing authority shall appoint another person to serve for the balance of the unexpired term. In the discretion of the appointing authority, a State Board of Education member or a member of the Board of Governors of The University of North Carolina may complete a term on the Commission after the member's appointment from the appointing board has expired.

(e) Commission members shall receive per diem, subsistence, and travel allowances in accordance with G.S. 138-5 or G.S. 138- 6, as appropriate.

(f) The Commission shall meet regularly, at times and places deemed necessary by the chair. (1993, c. 321, s. 85(a); 2006-203, s. 51.2.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2008-107, s. 9.4(a) and (b), as amended by Session Laws 2008-118, s. 1.4, provides: "(a) The North Carolina Principal Fellows Commission in collaboration with the State Education Assistance Authority shall make available an optional six-month scholarship in the amount of twenty thousand dollars ($20,000) to any person who was a recipient of a scholarship loan through the Principal Fellows Program and who: (i) was in Class 10 of the Principal Fellows Program for the 2003-2004 academic year, (ii) completed the Principal Fellows Program, and (iii) has either served as a school administrator for four years at a North Carolina public school or at a school operated by the United States as required by G.S. 116-74.43, or who has had the loan forgiven by the State Education Assistance Authority pursuant to G.S. 116-74.43. A person may be eligible for the optional six-month scholarship only after fulfilling all contractual obligations agreed to by the person upon receipt of the original scholarship loan awarded to the person under G.S. 116-74.42. Exclusive of any deferment for extenuating circumstances, a person remains eligible for the optional six-month scholarship for two years after the six-year period of time allowed the person to satisfy the original scholarship loan requirements under G.S. 116-74.43. Should a person present extenuating circumstances, the State Education Assistance Authority may extend the period of time for which a person remains eligible for the optional six-month scholarship for a reasonable time period.

"(b) The Principal Fellows Commission shall develop the criteria for awarding the scholarship. In developing the criteria, the Commission shall require that the person agree to work at least another six months as a school administrator in a North Carolina public school or at a school operated by the United States after satisfying the four-year work requirement set out in G.S. 116-74.43. The Commission, in collaboration with the State Education Assistance Authority, shall develop a process for evaluating a scholarship recipient's work performance and for issuing a final approval and certification of the work performance. The Commission shall transfer to the State Education Assistance Authority the name of each recipient that it certifies as successfully completing the optional scholarship program. The State Education Assistance Authority shall pay the twenty thousand dollar ($20,000) scholarship to the scholarship recipient within a reasonable time of receiving notification from the Commission that the recipient has successfully completed the optional scholarship program. The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this act, including rule making."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 51.2, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, added subsection (a1).

§ 116-74.42. Principal Fellows Program established; administration.

(a) A Principal Fellows Program shall be administered by the North Carolina Principal Fellows Commission in collaboration with the State Education Assistance Authority. The Principal Fellows Program shall provide up to a two-year scholarship loan to selected recipients and shall provide extracurricular enhancement activities for recipients. The North Carolina Principal Fellows Commission shall determine selection criteria, methods of selection, and shall select recipients to receive scholarship loans made under the Principal Fellows Program.

(b) The Board of Governors of The University of North Carolina shall appoint a director of the Principal Fellows Program. The director shall chair and staff the Principal Fellows Commission, and shall administer the extracurricular enhancement activities of the program. The Board of Governors shall provide office space and clerical support staff for the program.

(c) The Principal Fellows Program shall provide a two-year scholarship loan in the amount specified in subsection (c1) of this section to persons who may be eligible to be selected as school administrators in the public schools of the State by completing a full-time program in school administration in an approved program. Approved programs are those chosen by the Commission from among school administrator programs within the State. No more than 200 principal fellow scholarship loan awards shall be made in each year. The final number of scholarship loan awards per year shall be made in accordance with the Board of Governors' findings concerning the supply and demand of administrators, the State's need for school administrator candidates and within funds appropriated for the scholarship loans. Effective September 1, 1995, and in accordance with school administrator training programs established by the Board of Governors of The University of North Carolina, recipients shall be required to complete an approved full-time academic program during the first year of the scholarship loan program and a full-time internship during the second year of the program. In order to attract fellows as interns, local school administrative units may use all or part of the funds allotted for an assistant principal salary for each intern accepted by the local school administrative unit; however, interns shall not serve as assistant principals.

(c1) The scholarship loan shall be thirty thousand dollars ($30,000) per participant for the first year of participation. For the second year of participation, the amount of the scholarship loan per participant shall be sixty percent (60%) of the beginning salary for an assistant principal plus four thousand one hundred dollars ($4,100) for tuition, fees, and books. The Commission may adjust the amount of the scholarship loan specified in this subsection to take into account increases in tuition, fees, and the cost of books, increases in the State principal assistant salary schedule, and changes in the stipend paid to participants in the program during the second year internship.

(d) The Commission shall adopt stringent standards, which may include standardized test scores, undergraduate performance, job experience and performance, leadership and management abilities, and other standards deemed appropriate by the Commission, to ensure that only the best potential students receive scholarship loans under the Principal Fellows Program. The Commission shall consider the qualifications of all applicants fairly, regardless of gender or race, and shall consider the geographic diversity of the State. Scholarship loans under the Principal Fellows Program shall be awarded only to applicants who meet the standards set by the Commission, are domiciled in North Carolina, and who agree to work as school administrators in a North Carolina public school or at a school operated by the United States government in North Carolina upon completion of the two-year school administrator program supported by the loan.

(e) The Commission shall develop and administer the Principal Fellows Program in cooperation with school administrator programs at institutions approved by the Commission. The Commission shall develop criteria and a process for the approval of campus program sites. Extracurricular enhancement activities shall be coordinated with each fellow's campus program and shall focus on the leadership development of program fellows.

(f) The Commission may form regional review committees to assist it in identifying the best applicants for the program. The Commission and the review committees shall make an effort to identify and encourage women and minorities and others who may not otherwise consider a career in school administration to apply for the Principal Fellows Program.

(g) Upon the naming of recipients of the scholarship loans by the Principal Fellows Commission, the Commission shall transfer to the State Education Assistance Authority (SEAA) its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rule making, dissemination of information, disbursement, receipt, liaison with participating educational institutions, determination of the acceptability of service repayment agreements, and all other functions necessary for the execution, payment, and enforcement of promissory notes required under this Article. (1993, c. 321, s. 85(a); 2006-66, ss. 9.16(a), (b).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 9.16.(a), (b), which substituted "amount specified in subsection (c1) of this section" for "amount of twenty thousand dollars ($20,000) per year, per recipient" in the first sentence of subsection (c); and added subsection (c1), applicable to recipients of scholarship loans for the 2006-2007 academic year and each subsequent academic year.

Session Laws 2006-66, s. 28.6 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Commission May Approve School Administrator Programs at Private Institutions and May Award Scholarship Loans to Qualified Persons in Such Programs. — The Principal Fellows Commission has broad authority to approve school administrator programs at private institutions and to permit persons enrolled in such programs to participate in the Principal Fellows Program. See opinion of Attorney General to Karen F. Gerringer, Director, North Carolina Principal Fellows Program, 1999 N.C. AG LEXIS 23 (7/2/99).

§ 116-74.43. Terms of loans; receipt and disbursement of funds.

(a) All scholarship loans shall be evidenced by notes made payable to the State Education Assistance Authority that bear interest at a rate not to exceed ten percent (10%) per year as set by the Authority and beginning 90 days after completion of the school administrator program, or 90 days after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated upon the recipient's withdrawal from school or by the recipient's failure to meet the standards set by the Commission.

(b) The State Education Assistance Authority shall forgive the loan and any interest accrued on the loan if, within six years after graduation from a school administrator program, exclusive of any authorized deferment for extenuating circumstances, the recipient serves for four years as a school administrator at a North Carolina public school or at a school operated by the United States government in North Carolina. The SEAA shall also forgive the loan if it finds that it is impossible for the recipient to work for four years, within six years after completion of the two-year school administrator program supported by the scholarship loan at a North Carolina public school, or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within 12 years after completion of the two-year school administrator program supported by the scholarship loan. If the recipient completes the school administrator program, payment of principal and interest shall begin no later than 27 months after the completion of the program. Should a recipient present extenuating circumstances, the State Education Assistance Authority may extend the period to repay the loan in cash to no more than a total of 15 years.

(c) All funds appropriated to, or otherwise received by, the Principal Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a university trust fund. This university trust fund may be used only for scholarship loans granted under the Principal Fellows Program and administrative costs associated with the recovery of funds advanced under the program. (1993, c. 321, s. 85(a); 1993 (Reg. Sess., 1994), c. 677, s. 12(a); 2008-204, s. 5.3.)

Editor's Note. — Session Laws 2008-204, s. 5.4, provides: "This section becomes effective January 1, 2009, and applies to all scholarship loans issued on and after July 1, 2009."

Effect of Amendments. — Session Laws 2008-204, s. 5.3, substituted "a rate not to exceed ten percent (10%) per year as set by the Authority and" for "the rate of ten percent (10%) per year" in the first sentence of subsection (a). For effective date and applicability, see Editor's note.

ARTICLES 6-9.

[Repealed.]

§§ 116-75 through 116-104: Repealed by Session Laws 1957, c. 1142.

Article 10.

State School for the Blind and the Deaf in Raleigh.

§§ 116-105 through 116-119: Transferred to G.S. 115-321 to 115-335 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now G.S. 143B-216.40 through 143B-216.44. As to State school for sight-impaired children, see now G.S. 143B-164.10 and 143B-164.13.

Article 11.

North Carolina School for the Deaf at Morganton.

§ 116-120: Transferred to G.S. 115-336 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now G.S. 143B-216.40 through 143B-216.44.

§§ 116-121 through 116-124: Repealed by Session Laws 1963, c. 448, s. 28.

§ 116-124.1: Transferred to G.S. 115-342 by Session Laws 1963, c. 448, s. 28.

§ 116-125: Transferred to G.S. 115-343 by Session Laws 1963, c. 448, s. 28.

Article 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

§§ 116-125.1 through 116-125.5: Transferred to G.S. 115-337 to 115-341 by Session Laws 1963, c. 448, s. 28.

Editor's Note. — Chapter 115 was repealed by Session Laws 1981, c. 423, and superseded by Chapter 115C; parts of Chapter 115C were subsequently recodified in Chapter 143B. As to State schools for hearing-impaired children, see now G.S. 143B-216.40 through 143B-216.44.

Article 12.

The Caswell School.

§§ 116-126 through 116-137: Repealed by Session Laws 1963, c. 1184, s. 7.

ARTICLE 13.

Colored Orphanage of North Carolina.

§§ 116-138 through 116-142: Transferred to G.S. 115-344 to 115-348 by Session Laws 1963, c. 448, s. 28.

ARTICLE 13A.

Negro Training School for Feebleminded Children.

§§ 116-142.1 through 116-142.10: Repealed by Session Laws 1963, c. 1184, s. 8.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

(a) The Board of Governors of The University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions of higher education enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

(b) In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished. Notwithstanding this section, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports. The Board of Governors of The University of North Carolina shall not authorize a reduced rate of tuition for the special talent of athletics.

(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of The

University of North Carolina may during the period of normal employment enroll for not more than two courses per year in The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2; c. 1244, s. 12; 1973, c. 116, s. 1; 1977, c. 605; 1981, c. 859, s. 41.4; 2006-66, s. 9.11(i); 2009-451, ss. 9.21, 9.22(a).)

Cross References. — As to powers and duties of Board of Governors of the University of North Carolina, see G.S. 116-11.

Students Called to Military Service, etc. for 2001-2002 Academic Year. — Session Laws 2001-508, s. 8(a) and provides: "Section 8(a). UNC System Refunds. — This section [s. 8 of Session Laws 2001-508] is intended to assist the constituent institutions of The University of North Carolina in situations in which students request refunds of tuition or fees because of involuntary or voluntary service in the military or because of circumstances related to national emergencies.

"Upon request of the student, all constituent institutions may issue a full refund of tuition and required fees to students who are involuntarily called to active duty in the military after a semester or term begins.

"All constituent institutions should have a process for determining on a case-by-case basis whether to grant a full refund of tuition and required fees to students who volunteer for military service or who request to withdraw because of circumstances related to a national emergency.

"Constituent institutions should determine under what circumstances students who withdraw because of military service or circumstances related to national emergencies should be given the option of receiving incompletes in their courses instead of receiving tuition and fee refunds.

"Constituent institutions should determine whether or not to give full or pro rata refunds of housing, parking, and other optional fees to students to whom they give tuition and required fee refunds.

"Constituent institutions which offer courses on military bases should defer to their contracts with the military in making determinations concerning withdrawal from courses due to changes in assignments of military personnel.

"It is recommended that every campus review its policy on tuition refunds and make modifications necessary to cover the circumstances described in this section [s. 8 of Session Laws 2001-508].

"Section 8(b). Legislative Tuition Grants. — Students who are receiving the North Carolina Legislative Tuition Grant who lose their full-time student status due to a call to active military duty or circumstances related to national emergencies shall not be required to repay the Legislative Tuition Grant for that semester. The North Carolina State Education Assistance Authority shall implement this subsection [s. 8(b) of Session Laws 2001-508].

"Section 8(c). This section [s. 8 of Session Laws 2001-508] applies to the 2001-2002 academic year only."

Editor's Note. — For note regarding Session Laws 1993, c. 321, s. 89, as amended, and monitoring of the "Plan to Improve Orientation Rates in the University of North Carolina," see G.S. 116-11.

Session Laws 1997-443, s. 10.21, provides that the Board of Governors of The University of North Carolina may set tuition rates for students in the Masters of Business Administration and the Masters of Accounting programs of the School of Business at the University of North Carolina at Chapel Hill that are higher than those currently set pursuant to G.S. 116-143. The Board of Governors is also to conduct a study of tuition levels and adjust tuition rates to align with policies on tuition differentials, and report to the Joint Legislative Education Oversight Committee by January 15, 1999, regarding the findings of its study.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2009-451, s. 9.22(b), provides: "No policy adopted by the Board of Governors to authorize a special tuition rate for students who have athletics as a special talent shall be implemented."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, ss. 9.21 and 9.22(a), effective July 1, 2009, in subsection (c), added the last sentence;

and in subsection (d), substituted "two courses" for "three courses" near the middle.

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

CASE NOTES

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining

legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No persons shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(h1) Any member of a North Carolina National Guard unit who is a nonresident shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate and applicable mandatory fees. This subsection applies to members in a reserve or active duty status.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent for North Carolina individual income tax purposes. The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

(1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and

(2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

(1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and

(2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(*l*) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandonment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person.

(m) Notwithstanding subsection (b) of this section, a person who is a full-time employee of The University of North Carolina, or is the spouse or dependent child of a full-time employee of The University of North Carolina, and who is a legal resident of North Carolina, qualifies as a resident for tuition purposes without having maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905; 1987, c. 564, s. 19; 1989, c. 728, s. 1.3; 1991 (Reg. Sess., 1992), c. 1030, s. 32; 2004-130, s. 2; 2005-276, s. 9.25(a).)

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

CASE NOTES

Evidence Held Sufficient to Support Determination of Nonresidency. — Although the whole record did not support University's State Residency Committee's decision to the exclusion of all other conclusions, the record disclosed substantial evidence sufficient to support its determination that petitioner was not a North Carolina resident for tuition purposes; therefore, the trial court's reversal of the Committee's decision was error. Wilson v. State Residence Comm., 92 N.C. App. 355, 374 S.E.2d 415 (1988), cert. denied, 324 N.C. 252, 377 S.E.2d 764 (1989).

Regulation Held Invalid. — Regulation providing that a student classified as a nonresident for tuition purposes at the time of his original enrollment at a State institution of higher learning, in order to qualify for in-state tuition, must be domiciled in this State for at least six months preceding the date of reenrollment without being enrolled in an institution of higher education during the six-month period is invalid. Glusman v. Trustees of Univ. of N.C., 284 N.C. 225, 200 S.E.2d 9 (1973).

Legal Residence of Parents Not Prima Facie Evidence of Residence. — Although university student's parents were domiciled outside North Carolina, the legal residence of her parents was not prima facie evidence of her legal residence since she had lived in this state five consecutive years prior to enrolling at the university. Fain v. State Residence Comm., 117 N.C. App. 541, 451 S.E.2d 663, aff'd, 342 N.C.

402, 464 S.E.2d 43 (1995).

Student May Establish Domicile While Enrolled at University. — A student who was classified as a nonresident for tuition purposes at the time of his original enrollment could become, upon establishing his domicile in North Carolina for six months or more, entitled to in-State tuition status notwithstanding during this six months period he was enrolled in an institution of higher education in this State. Glusman v. Trustees of Univ. of N.C., 284 N.C. 225, 200 S.E.2d 9 (1973).

Students Found to Have Same Domicile as Parents. — Under subsection (e) students were presumed to have the same domicile where their parents lived in other states as, neither student lived in North Carolina for five consecutive years and in their applications they stated they came to the state for educational opportunities. Norman v. Cameron, 127 N.C. App. 44, 488 S.E.2d 297 (1997), cert. denied, 347 N.C. 398, 494 S.E.2d 416 (1997).

§ 116-143.2: Expired.

Editor's Note. — This section, which was enacted by Session Laws 1977, c. 590, s. 1, expired by the terms of s. 2 of the 1977 act on July 1, 1982.

§ 116-143.3. Tuition of armed services personnel and their dependents.

(a) Definitions. — The following definitions apply in this section:

(1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(2) The term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing.

(3) Repealed by Session Laws 2007-484, s. 15, effective August 30, 2007.

(b) Any active duty member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the in-State tuition rate and applicable mandatory fees for enrollments while the member of the armed services is abiding in this State incident to active military duty in this State. In the event the active duty member of the armed services is reassigned outside of North Carolina or retires, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is reassigned. In the event the active duty member of the armed services receives an Honorable Discharge from military service, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member establishes residency in North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is discharged.

(b1), (b2) Repealed by Session Laws 2004-130, s. 1, effective August 1, 2004.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services is reassigned outside of North Carolina or retires, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is reassigned or retires. In the event the member of the armed services receives an Honorable Discharge from military service, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative establishes residency within North Carolina within 30 days after the discharge and is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is discharged.

(d) The person applying for the benefit of this section has the burden of proving entitlement to the benefit.

(e) A person charged less than the out-of-state tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (*l*). (1983 (Reg. Sess., 1984), c. 1034, s. 57; 1985, c. 39, s. 1; c. 479, s. 69; c. 757, s. 154; 1987, c. 564, § 7; 1997-443, s. 10.2; 2003-284, s. 8.16(a); 2004-130, s. 1; 2005-276, s. 9.38; 2005-345, s. 14; 2005-445, s. 7; 2007-484, s. 15.)

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

Editor's Note. — The definitions in subdivisions (a)(1) and (a)(2) were renumbered in alphabetical order at the direction of the Revisor of Statutes.

Session Laws 2003-300, s. 6(a), provides: "UNC System Refunds. — This section is intended to assist the constituent institutions of The University of North Carolina in situations in which students request refunds of tuition or fees because of involuntary or voluntary service in the military or because of circumstances related to national emergencies.

"Upon request of the student, all constituent institutions may issue a full refund of tuition and required fees to students who are involuntarily called to active duty in the military after a semester or term begins.

"All constituent institutions should have a process for determining on a case-by-case basis whether to grant a full refund of tuition and required fees to students who volunteer for military service or who request to withdraw because of circumstances related to a national emergency.

"Constituent institutions should determine under what circumstances students who withdraw because of military service or circumstances related to national emergencies should be given the option of receiving incompletes in their courses instead of receiving tuition and fee refunds.

"Constituent institutions should determine whether or not to give full or pro rata refunds of housing, parking, and other optional fees to students to whom they give tuition and required fee refunds.

"Constituent institutions that offer courses on military bases should defer to their contracts with the military in making determinations concerning withdrawal from courses due to changes in assignments of military personnel.

"It is recommended that every campus review its policy on tuition refunds and make modifications necessary to cover the circumstances described in this section."

§ 116-143.4. Admissions status of persons charged in-State tuition.

A person eligible for the in-State tuition rate pursuant to this Article shall be considered an in-State applicant for the purpose of admission; provided that, a person eligible for in-State tuition pursuant to G.S. 116-143.3(c) shall be considered an in-State applicant for the purpose of admission only if at the time of seeking admission he is enrolled in a high school located in North Carolina or enrolled in a general education development (GED) program in an institution located in this State. (1989 (Reg. Sess., 1990), c. 907, s. 1.)

§ 116-143.5. Tuition of certain teachers.

Notwithstanding G.S. 116-143.1, any teacher or other personnel paid on the teacher salary schedule who (i) has established a legal residence (domicile) in

North Carolina and (ii) is employed full-time by a North Carolina public school, shall be eligible to be charged the in-State tuition rate for courses relevant to teacher certification or to professional development as a teacher. (1997-443, s. 8.22(c).)

Editor's Note. — Session Laws 2005-276, s. 9.35, provides: "The Joint Legislative Education Oversight Committee shall study the current law regarding the in-State tuition rate available to certain teachers for courses relevant to teacher certification or professional development as a teacher. In its study, the Committee shall consider the difficulty some teachers have in establishing North Carolina as their domicile, the fact that school systems on the borders of the State often recruit nonresidents who commute from their homes to teach in the North Carolina public school system and so are unable to establish this State as their domicile and any other relevant issues. The Committee shall make an interim report regarding its findings and recommendations to the 2005 General Assembly by May 30, 2007, and shall make a final report of its findings and recommendations to the 2007 General Assembly."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 116-143.6. Full scholarship students attending constituent institutions.

(a) Notwithstanding any other provision of law, if the Board of Trustees of a constituent institution of The University of North Carolina elects to do so, it may by resolution adopted consider as residents of North Carolina all persons who receive full scholarships to the institution from entities recognized by the institution and attend the institution as undergraduate students. The aforesaid persons shall be considered residents of North Carolina for all purposes by The University of North Carolina.

(b) The following definitions apply in this section:

(1) "Full cost" means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on-campus room and board.

(2) "Full scholarship" means a grant that meets the full cost for a student to attend the constituent institution for an academic year.

(c) This section shall not be applied in any manner that violates federal law.

(d) This section shall be administered by the electing constituent institution so as to have no fiscal impact.

(e) In administering this section, the electing constituent institution shall maintain at least the current number of North Carolina residents admitted to that constituent institution. (2005-276, s. 9.27(a).)

Editor's Note. — Subsection (b)(1), defining "full cost" and subsection (b)(2), defining "full scholarship" were designated as such at the direction of the Revisor of Statutes, the designations in Session Laws 2005-276, s. 9.37(a), having been (b)(2) and (b)(1), respectively.

Session Laws 2005-276, s. 9.27(b), provides: "This section applies to students who accept admission on or after July 1, 2005, to a constituent institution."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 116-143.7. Tuition surcharge.

(a) **(Effective beginning with the 2009-2010 academic year)** The Board of Governors of The University of North Carolina shall impose a twenty-five percent (25%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at a constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

(1) Included are courses that a student:
  a. Fails.
  b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.

(2) Excluded are credit hours earned through:
  a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
  b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
  c. Summer term or extension programs.

(a) **(Effective beginning with the 2010-2011 academic year)** The Board of Governors of The University of North Carolina shall impose a fifty percent (50%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at that constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

(1) Included are courses that a student:
  a. Fails.
  b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.

(2) Excluded are credit hours earned through:
  a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
  b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
  c. Summer term or extension programs.

(b) No surcharge shall be imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment or within five academic years of regular term enrollment in a degree program officially designated by the Board of Governors as a five-year program.

(c) Upon application by a student, the tuition surcharge shall be waived if the student demonstrates that any of the following have substantially disrupted or interrupted the student's pursuit of a degree: (i) a military service obligation, (ii) serious medical debilitation, (iii) a short-term or long-term disability, or (iv) other extraordinary hardship. The Board of Governors shall

G.S. 116-143.7(a) is set out twice. See notes

establish the appropriate procedures to implement the waiver provided by this subsection. (2009-451, s. 9.10(a), (b).)

Subsection (a) set out twice. — The first version of subsection (a) above is effective beginning with the 2009-2010 academic year. The second version of subsection (a) above is effective beginning with the 2010-2011 academic year.

Editor's Note. — Session Laws 2009-451, s. 9.10(c) makes this section effective beginning with the 2009-2010 academic year.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 9.10(b), effective beginning with the 2010-2011 academic year, substituted "fifty percent (50%)" for "twenty-five percent (25%)" in the introductory language of subsection (a).

§ 116-144. Higher tuition to be charged nonresidents.

The Board of Governors shall fix the tuition and required fees charged nonresidents of North Carolina who attend the institutions enumerated in G.S. 116-4 at rates higher than the rates charged residents of North Carolina and comparable to the rates charged nonresident students by comparable public institutions nationwide, except that a person who serves as a graduate teaching assistant or graduate research assistant or in a similar instructional or research assignment and is at the same time enrolled as a graduate student in the same institution may, in the discretion of the Board of Governors, be charged a lower rate fixed by the Board, provided the rate is not lower than the North Carolina resident rate. (1933, c. 320, s. 3; 1983, c. 761, s. 112.)

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

CASE NOTES

The State's right to charge nonresidents higher tuition than residents is not challenged and has been repeatedly upheld as reasonably related to the State's legitimate interest in operating, maintaining and financing its educational institutions. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972), vacated and remanded on other grounds, 412 U.S. 947, 93 S. Ct. 2999, 37 L. Ed. 2d 999, on remand, Glusman v. Trustees of Univ. of N.C., 284 N.C. 225, 200 S.E.2d 9 (1973). See note to § 116-143.1.

Cited in Barker v. Iowa Mut. Ins. Co., 241 N.C. 397, 85 S.E.2d 305 (1955); Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ 116-145 through 116-148.1: Repealed by Session Laws 1951, c. 1160, s. 1.

§§ 116-149 through 116-153: Repealed by Session Laws 1967, c. 1060, s. 10.

Article 16.

State Board of Higher Education.

§§ 116-154 through 116-157: Repealed by Session Laws 1971, c. 1244, s. 14.

§ 116-158. Powers and duties generally.

The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of Article 1, Chapter 143 of the General Statutes except as herein otherwise provided:

(1) to (8) Repealed by Session Laws 1971, c. 1244, s. 14.

(9) Transferred to G.S. 116-18 by Session Laws 1971, c. 1244, s. 4. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7; 1965, c. 1096, s. 3; 1971, c. 1244, ss. 4, 14.)

§§ 116-158.1 through 116-158.4: Transferred to G.S. 116-19 to 116-22 by Session Laws 1971, c. 1244, s. 5.

§§ 116-159 through 116-167: Repealed by Session Laws 1971, c. 1244, s. 14.

Article 17.

College Revolving Fund.

§§ 116-168 through 116-170: Repealed by Session Laws 1983, c. 717, s. 34.

Article 18.

Scholarship Loan Fund for Prospective Teachers.

§§ 116-171 through 116-174: Transferred to G.S. 115C-468 to 115C-471 by Session Laws 1983 (Regular Session 1984), c. 1034, s. 10.1.

Article 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.

All minors in North Carolina of the age of 17 years and upwards shall have full power and authority to enter into written contracts of indebtedness, at a rate of interest not exceeding the contract rate authorized in Chapter 24 of the General Statutes, with persons and educational institutions or with firms and corporations licensed to do business in North Carolina and to execute notes evidencing such indebtedness. Such loans shall be:

(1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;
(2) For the sole purpose of borrowing money to obtain post-secondary education at an accredited college, university, junior college, community college, business or trade school provided, however, that none of the proceeds of such loans shall be used to pay for any correspondence courses;
(3) The proceeds of any loan shall be disbursed either directly to the educational institution for the benefit of the borrower or jointly to the borrower and the educational institution. (1963, c. 780; 1969, c. 1073; 1987, c. 564, s. 36.)

Legal Periodicals. — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

CASE NOTES

Cited in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 116-174.2. Grounds for revocation of scholarships.

Any student regularly registered and enrolled as an undergraduate, graduate, or professional student in a state-supported college, university or community college who shall be convicted, enter a plea of guilty or nolo contendere upon an indictment or charge for engaging in a riot, inciting a riot, unlawful demonstration or assembly, seizing or occupying a building or facility, sitting down in buildings they have seized, or lying down in entrances to buildings or any facilities, or on the campus of any college, university, or community college, or any student, whether an undergraduate, graduate or professional student who shall forfeit an appearance bond on an indictment or charge of any of the above-named offenses, shall have revoked and withdrawn from his benefit all state-supported scholarships or any State funds granted to him for educational assistance. It shall be the duty of all persons or officials having charge of and authority over the granting of state-supported scholarships or any other form of financial assistance to immediately revoke and withdraw same in the event and upon the happening of any of the conditions or matters above enumerated; provided, however, that in subsequent academic terms any such student shall be eligible to be considered for and to be granted financial assistance from State funds. (1969, c. 1019.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

(1) The word "Board" shall mean the Board of Governors of the University of North Carolina.
(2) The word "cost" as applied to a project shall include the cost of acquisition or construction, the cost of all labor, materials and

equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such acquisition or construction, administrative expense and such other expenses, including reasonable provision for initial operating expenses, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2.

(4) The word "project" shall mean and shall include any one or more buildings for student housing of any size or type approved by the Board of Governors of the University of North Carolina, and the Director of the Budget, and any enlargements or improvements thereof or additions thereto, so approved for the housing of students at either institution, together with the necessary land and equipment. The approval of a project by the Board of Governors of the University of North Carolina and the Director of the Budget shall specify a time within which construction contracts shall be awarded. (1957, c. 1131, s. 1; 1963, cc. 421, 422; c. 448, s. 20.1; c. 1158, ss. 1, 1 1/2; 1965, c. 31, s. 3; 1967, c. 1038; 1969, c. 297, s. 7; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1244, s. 16; 1983, c. 577, s. 6.)

Cross References. — As to revenue bonds for services and auxiliary facilities at The University of North Carolina, see G.S. 116-41.1 through 116-41.12.

Editor's Note. — Session Laws 1983, c. 577, the Separation of Powers Bond Act of 1983, provided in s. 19: "Validation. All actions, appropriations, regulations or bonds taken, made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes or Part 10 of Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission."

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-175.1: Repealed, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, by Session Laws 2006-203, s. 52.

§ 116-176. Issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under terms and conditions as may be fixed by the Board prior to the issuance of the bonds.

The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be in the best interest of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Article, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds. (1957, c. 1131, s. 2; 1969, c. 1158, s. 1; 1971, c. 511, s. 1; 1975, c. 233, s. 1; 1983, c. 577, s. 6.)

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-177. Revenues for payment of bonds; rules for use of facilities.

So long as any bonds issued under this Article shall be outstanding the Board shall fix, and may revise from time to time, rentals for the facilities to be furnished by any project financed under this Article or for the right to use any such facilities or to receive any such services. Such rentals shall be fixed and revised so that the revenues received by the Board from any project or projects, together with any other available funds, will be sufficient at all times

(1) To pay the cost of maintaining, repairing and operating such project or projects, including reserves for such purposes, and

(2) To pay when added to increased rentals from existing facilities the principal of and the interest on the bonds for the payment of which such revenues are pledged and to provide reserves therefor.

The Board shall increase the rentals for the facilities furnished by any existing dormitories at any institution to provide, to the extent necessary, additional funds to liquidate in full any revenue bonds issued under this Article.

The Board is further authorized to make and enforce and to contract to make and enforce parietal rules that shall insure the maximum use of any project or existing facilities. (1957, c. 1131, s. 3.)

§ 116-178. Trust agreement.

In the discretion of the Board and subject to the approval of the Director of the Budget, each or any issue of revenue bonds may be secured by a trust agreement by and between the Board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge to the extent necessary the revenues to be received from any project or projects at any institution and from any similar existing facilities described in G.S. 116-175(4) at the same institution, in excess of amounts now charged to each occupant of such project, but shall not convey or mortgage any such project or existing facilities, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition or construction of such project or projects and in relation to the maintenance, repair, operation and insurance of such project or projects and such existing facilities, the fixing and revising of rentals and other charges; and, the custody, safeguarding and application of all moneys, and for the employment of consulting engineers or architects in connection with such acquisition, construction or operation. Notwithstanding the provisions of any other law the Board may carry insurance on any such project or projects in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the Board may deem reasonable and proper for the security of the bondholders.

The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues of any project or existing facilities or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this Article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Board, irrespective of whether such parties have notice thereof. (1957, c. 1131, s. 4; 1983, c. 577, s. 6.)

§ 116-179. Sale of bonds; functions performed by executive committee.

The Board may authorize its executive committee to sell any bonds which the Board has, with the approval of the Director of the Budget, authorized to be issued under this Article in such manner and under such limitations or conditions as the Board shall prescribe and to perform such other functions under this Article as the Board shall determine. (1957, c. 1131, s. 5; 1983, c. 577, s. 6.)

§ 116-180. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide. (1957, c. 1131, s. 6.)

§ 116-181. Remedies.

Any holder of revenue bonds issued under the provisions of this Article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the Board or by any officer thereof, including the fixing, charging and collecting of fees, rentals and other charges. (1957, c. 1131, s. 7.)

§ 116-182. Refunding bonds.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds issued by the Board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds issued by the Board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional project or projects at the same institution.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Board with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1957, c. 1131, s. 8; 1983, c. 577, s. 6.)

Cross References. — As to refunding bonds issued under this Article, see G.S. 116-195.

§ 116-183. Acceptance of grants; exemption from taxation.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under this Article are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1957, c. 1131, s. 9; 1983, c. 577, s. 6; 1995, c. 46, s. 6.)

§ 116-184. Article cumulative.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1957, c. 1131, s. 10.)

§ 116-185. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1957, c. 1131, s. 11.)

ARTICLE 20.

Motor Vehicles of Students.

§ 116-186: Transferred to G.S. 116-42.4 by Session Laws 1971, c. 1244, s. 11.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-187. Purpose of Article.

The purpose of this Article is to authorize the Board of Governors of the University of North Carolina to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at the institutions hereinafter designated, housing of faculty, adult or continuing education programs and for revenue-producing parking decks or structures, and for University of North Carolina Hospitals at Chapel Hill. (1963, c. 847, s. 1; 1967, c. 1148, s. 1; 1971, c. 1061, s. 1; c. 1244, s. 16; 1979, c. 731, s. 6; 1989, c. 141, s. 4.)

Editor's Note. — Session Laws 1983, c. 577, the Separation of Powers Bond Act of 1983, provided in s. 19: "Validation. All actions, appropriations, regulations or bonds taken, made or issued under the provisions of Chapter 909, Session Laws of 1971, Chapter 677, Session Laws of 1977, Part 4 of Article 1 of Chapter 116 of the General Statutes, Articles 19 or 21 of Chapter 116 of the General Statutes, Article 23C of Chapter 113 of the General Statutes or Part 10 of Article 10 of Chapter 143B of the General Statutes are valid notwithstanding the fact that certain powers were granted to and exercised by the Advisory Budget Commission."

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-187.1: Repealed, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, by Session Laws 2006-203, s. 53.

§ 116-188. Credit and taxing power of State not pledged; statement on face of bonds.

Revenue bonds issued as in this Article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the

State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1963, c. 847, s. 2.)

CASE NOTES

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-189. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "Board" shall mean the Board of Governors of the University of North Carolina.

(2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction, provisions for working capital, reserves for debt service and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, and the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The term "existing facilities" shall mean buildings and facilities then existing any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(4) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2, the University of North Carolina Health Care System, and the University of North Carolina General Administration.

(5) The word "project" shall mean and shall include any one or more buildings, structures, or facilities of any size or type now or hereafter existing for (i) the housing, health, welfare, recreation, and convenience of students, (ii) the housing of faculty, (iii) academic, research, patient care, and community services, and (iv) parking at an institution or institutions, that has been approved by the Board and the Director of the Budget and any improvements or additions so approved to any such buildings, structures, or facilities, including, but without limiting the generality thereof, dormitories and other student, faculty, and adult or continuing education housing, dining

facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, infirmaries and other health care buildings, academic facilities, furnishings, equipment, parking facilities, and necessary land and interest in land. Any project may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, rooms and other facilities for guests and visitors, and facilities for meetings and for recreational, cultural, and entertainment activities.

(6) The word "revenues" shall mean all or any part of the rents, charges, fees (including student fees) and other income revenues derived from or in connection with any project or projects and existing facilities, and may include receipts and other income derived from athletic games and public events. (1963, c. 847, s. 3; 1965, c. 31, s. 3; 1967, c. 1038; c. 1148, s. 2; 1969, c. 297, s. 8; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1061, s. 2; c. 1244, s. 16; 1979, c. 731, s. 6; 1983, c. 577, s. 8; 1989, c. 141, s. 5; 2000-168, ss. 4, 5.)

§ 116-190. General powers of Board of Governors.

The Board is authorized, subject to the requirements of this Article:

(1) To determine the location and character of any project or projects and to acquire, construct and provide the same and to maintain, repair and operate and enter into contracts for the management, lease, use or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect (i) student fees from students enrolled at the institution operated by the Board, (ii) rates, fees, rents and charges for the use of and for the services furnished by all or any portion of any project or projects and (iii) admission fees for athletic games and other public events;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, including parietal rules, when deemed desirable by the Board, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities for such period or periods of years, not exceeding 40 years, upon such terms and conditions as the Board determines subject to the provisions of G.S. 143-341;

(6) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(8) To receive and accept from any federal, State or other public agency and any private agency, person or other entity donations, loans,

grants, aid or contributions of any money, property, labor or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1963, c. 847, s. 4; 1971, c. 1244, s. 14.)

§ 116-191. Issuance of bonds and bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Article, shall be deemed and construed to include the words "bond anticipation notes." (1963, c. 847, s. 5; 1969, c. 1158, s. 2; 1971, c. 511, s. 2; 1973, c. 662; 1975, c. 233, s. 2; 1983, c. 577, s. 8.)

§ 116-192. Trust agreement; money received deemed trust funds; insurance; remedies.

In the discretion of the Board and subject to the approval of the Director of the Budget, any revenue bonds issued under this Article may be secured by a trust agreement by and between the Board and a corporate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition, construction or provision of any project or projects, the maintenance, repair, operation and insurance of any project or projects and any existing facilities, student fees and admission fees and charges and other fees, rents and charges to be fixed and collected, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

All moneys received pursuant to the authority of this Article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this Article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law the Board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this Article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the Board or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1963, c. 847, s. 6; 1983, c. 577, s. 8.)

§ 116-193. Fixing fees, rents and charges; sinking fund.

For the purpose of aiding in the acquisition, construction or provision of any project and the maintenance, repair and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge and collect from students enrolled at the institution under its jurisdiction such student fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge and collect other fees, rents and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and admission fees for athletic games and other public events, and to contract with any person, partnership, association or corporation for the lease, use, occupancy or operation of, or for concessions in, any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents and charges for any such lease, use, occupancy, operation or concession. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Such fees, rents and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the fees, rents and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1963, c. 847, s. 7.)

§ 116-194. Vesting powers in executive committee.

The Board may authorize its executive committee to sell any bonds which the Board has, with the approval of the Director of the Budget, authorized to be issued under this Article in such manner and under such limitations or conditions as the Board shall prescribe and to perform such other functions under this Article as the Board shall determine. (1963, c. 847, s. 8; 1983, c. 577, s. 8.)

§ 116-195. Refunding bonds.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the Board under Chapter 1289 of the 1955 Session Laws of North Carolina or under G.S. 116-175 to 116-185, inclusive, or under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or revenue refunding bonds issued by the Board under said Chapter 1289 or under said G.S. 116-175 to 116-185, inclusive, or under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Board with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1963, c. 847, s. 9; 1983, c. 577, s. 8.)

§ 116-196. Exemption from taxation; bonds eligible for investment or deposit.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10; 1995, c. 46, s. 7.)

§ 116-197. Article provides additional and alternative method.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, including G.S. 116-175 to 116-185, inclusive, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1963, c. 847, s. 11.)

§ 116-198. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1963, c. 847, s. 12.)

§§ 116-198.1 through 116-198.5: Reserved for future codification purposes.

ARTICLE 21A.

Higher Educational Facilities Finance Act.

§§ 116-198.6 through 116-198.30: Not in effect.

Editor's Note. — This Article was enacted by Session Laws 1981, c. 784, and was made effective upon adoption of the constitutional amendment proposed by Session Laws 1981, c. 887. The constitutional amendment was submitted to the voters at an election held June 29, 1982, and was defeated. This Article therefore, did not go into effect.

ARTICLE 21B.

The Centennial Campus, the Horace Williams Campus, and the Millennial Campuses Financing Act.

§ 116-198.31. Purpose of Article.

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at Raleigh, for the Horace Williams Campus located at the University of North Carolina at

Chapel Hill, and for any Millennial Campus as defined by G.S. 116-198.33(4b). (1987, c. 336, s. 1; 1999-234, s. 3; 2000-177, ss. 3, 4.)

§ 116-198.32. Credit and taxing power of State not pledged; statement on face of bonds.

Revenue bonds issued as in this Article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1987, c. 336, s. 1.)

§ 116-198.33. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "Board" shall mean the Board of Governors of The University of North Carolina.

(2) The word "cost" as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word "Institution" shall mean North Carolina State University at Raleigh and the University of North Carolina at Chapel Hill, or a constituent institution of The University of North Carolina with a Millennial Campus as defined by G.S. 116-198.33(4b).

(4) The term "Centennial Campus" means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the

University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus.

(4a) The term "Horace Williams Campus" means all of the following properties:

a. The real property and appurtenant facilities left to the University of North Carolina at Chapel Hill by the Will of Henry Horace Williams.

b. All other real property and appurtenant facilities designated by the Board of Governors as part of the Horace Williams Campus. The properties designated by the Board of Governors do not have to be contiguous with the Horace Williams Campus to be designated as part of that Campus.

(4b) The term "Millennial Campus" means all real property and appurtenant facilities designated by the Board of Governors as part of a Millennial Campus of a constituent institution of The University of North Carolina other than North Carolina State University or the University of North Carolina at Chapel Hill. The properties designated by the Board of Governors do not have to be contiguous with the constituent institution to be designated as part of the institution's Millennial Campus.

(5) The term "existing facilities" shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word "project" shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial Campus, the Horace Williams Campus, or of a Millennial Campus as defined by G.S. 116-198.33(4b), including roads, water, sewer, power, gas, greenways, parking, or any other support facilities essential or convenient for the orderly conduct of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus, respectively.

(7) The word "revenues" shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities. (1987, c. 336, s. 1; 1998-159, s. 2; 1999-234, s. 4; 2000-177, s. 5.)

§ 116-198.34. General powers of Board of Governors.

The Board may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus, on the Horace Williams Campus, or on a Millennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus.

(8b) Acting on recommendation made by the President of The University of North Carolina after consultation by the President with the Chancellor and the Board of Trustees of a constituent institution, to designate real property held by, or to be acquired by, a constituent institution as a "Millennial Campus" of the institution. That designation shall be based on an express finding by the Board of Governors that the institution desiring to create a "Millennial Campus" has the administrative and fiscal capability to create and maintain such a campus and provided further, that the Board of Governors has found that the creation of the constituent institution's "Millennial Campus" will enhance the institution's research, teaching, and service missions as well as enhance the economic development of the region served by the institution. Upon formal request by the constituent institutions, the Board of Governors may authorize two or more constituent institutions which meet the requirements of this section to create a joint Millennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1987, c. 336, s. 1; 1998-159, s. 3; 1999-234, s. 5; 2000-177, s. 6.)

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Conference Center/Hotel and Golf Course on Centennial Campus of North Carolina State University. — Concurrence of the Department of Administration and formal approval by the Governor and Council of State will be required for a ground-lease of Centennial Campus property for construction of a Conference center/hotel and golf course. See opinion of Attorney General to Representative Martin L. Nesbitt, North Carolina General Assembly, 2002 N.C.A.G. 33 (11/26/02).

§ 116-198.35. Issuance of bonds and bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial Campus, on the Horace Williams Campus, or on a Millennial Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds" wherever used in this Article, shall be deemed and construed to include the words "bond anticipation notes." (1987, c. 336, s. 1; 1999-234, s. 6; 2000-177, s. 7.)

§ 116-198.36. Proceeds of bonds are deemed trust funds.

In the discretion of the Board and subject to the approval of the Director of the Budget, any revenue bonds issued under this Article may be secured by a trust agreement by and between the Board and a corporate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received but shall not convey or mortgage any project or projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition, construction, or provision of any project or projects, the maintenance, repair, operation, and insurance of any project or projects and any existing facilities, student fees and admission fees and charges, and other fees, rents, and charges to be fixed and collected, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies, and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board, or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank, trust company, or fiscal agent with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this Article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law, the Board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this Article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the Board or by any officer thereof, including the fixing, charging, and collecting of fees, rents, and charges. (1987, c. 336, s. 1.)

§ 116-198.37. Fixing fees, rents, and charges; sinking fund.

For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial Campus, the Horace Williams Campus, or a Millennial Campus, as applicable. Such fees, rents, and charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1987, c. 336, s. 1; 1999-234, s. 7; 2000-177, s. 8.)

§ 116-198.38. Refunding bonds.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the Board under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Director of the Budget, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or revenue refunding bonds issued by the Board under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the Board with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1987, c. 336, s. 1.)

§ 116-198.39. Bonds are exempt from taxation.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency, or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1987, c. 336, s. 1; 1995, c. 46, s. 8.)

§ 116-198.40. Article provides additional and alternative method of financing; not exclusive.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special, or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1987, c. 336, s. 1.)

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§§ 116-199, 116-200: Repealed by Session Laws 1995, c. 379, s. 17.

ARTICLE 23.

State Education Assistance Authority.

§ 116-201. Purpose and definitions.

(a) The purpose of this Article is to authorize a system of financial assistance, consisting of grants, loans, work-study or other employment, and other aids, to assist qualified students to enable them to obtain an education beyond the high school level by attending public or private educational institutions. The General Assembly has found and hereby declares that it is in the public interest and essential to the welfare and well-being of the State and to the proper growth and development of the State to foster and provide financial assistance to properly qualified students in order to help them to obtain an education beyond the high school level. The General Assembly has further found that many students who are fully qualified to enroll in appropriate educational institutions for furthering their education beyond the high school level lack the financial means and are unable, without financial assistance as authorized under this Article, to pay the cost of such education, with a consequent irreparable loss to the State of valuable talents vital to its welfare. The General Assembly has determined that the establishment of a proper system of financial assistance for such objective purpose serves a public purpose and is fully consistent with the long established policy of the State to encourage, promote and assist education to enhance economic development.

(b) As used in this Article, the following terms shall have the following meanings unless the context indicates a contrary intent:

(1) "Article" or "this Article" means this Article 23 of the General Statutes of North Carolina, presently comprising G.S. 116-201 through 116-209.24;

(2) "Authority" means the State Education Assistance Authority created by this Article or, if the Authority is abolished, the board, body, commission or agency succeeding to its principal functions, or on whom the powers given by this Article to the Authority shall be conferred by law;

(3) "Bond resolution" or "resolution" when used in relation to the issuance of bonds is deemed to mean either any resolution authorizing the

issuance of bonds or any trust agreement or other instrument securing any bonds;

(4) "Bonds" or "revenue bonds" means the obligations authorized to be issued by the Authority under this Article, which may consist of revenue bonds, revenue refunding bonds, bond anticipation notes and other notes and obligations, evidencing the Authority's obligation to repay borrowed money from revenues, funds and other money pledged or made available therefor by the Authority under this Article;

(5) "Eligible institution," with respect to student loans, has the same meaning as the term has in section 1085 of Title 20 of the United States Code;

(6) "Eligible institution," with respect to grants and work-study programs, includes the constituent institutions of The University of North Carolina, all state-supported institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;

(7) "Student obligations" means student loan notes and other debt obligations evidencing loans to students which the Authority may make, take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;

(8) "Private institution" means an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or any agency or political subdivision thereof, or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools or, in the case of institutions that are not eligible to be considered for accreditation, accredited in those categories and by those nationally recognized accrediting agencies that the Authority may designate;

(9) "Reserve Trust Fund" means the trust fund authorized under G.S. 116-209 of this Article;

(10) "State Education Assistance Authority Loan Fund" means the trust fund so designated and authorized by G.S. 116-209.3 of this Article;

(11) "Student," with respect to scholarships, grants, and work-study programs, means a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the Board of Governors of The University of North Carolina and published in the residency manual of the Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution for the purpose of pursuing his education beyond the high school level, who is making suitable progress in his education in accordance with standards acceptable to the Authority and, for the purposes of G.S. 116-209.19, who has not received a bachelor's degree, or qualified for it and who is otherwise classified as an undergraduate under those regulations that the Authority may promulgate;

(12) "Student," with respect to loans, means a resident of the State as defined in (11) of this subsection and an eligible student as defined in 20 U.S.C. 1071 who is enrolled in an eligible institution located in North Carolina; and

(13) "Student loans" means loans to students defined in subdivisions (11) and (12) of this subsection to aid them in pursuing their education beyond the high school level. (1965, c. 1180, s. 1; 1971, c. 392, s. 1; c. 1244, s. 14; 1979, c. 165, s. 1; 1987, c. 227, ss. 1, 2.)

Editor's Note. — Session Laws 1987, c. 738, s. 41(a), effective August 7, 1987, provided that the responsibility for the Need-Based Student Loans is transferred from the North Carolina Board for Need-Based Student Loans to the State Education Assistance Authority (SEAA) of The University of North Carolina created under Chapter 116, Article 23 of the General Statutes.

Chapter 115A, referred to in subdivision (b)(6) of this section, was repealed by Session Laws 1979, c. 462, s. 1. See now Chapter 115D.

CASE NOTES

Applied in Nicholson v. State Educ. Assistance Auth., 275 N.C. 439, 168 S.E.2d 401 (1969).

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

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Authority's Power to Make Loans. — The North Carolina State Education Assistance Authority has the power to make loans to parents of students for the purpose of paying the costs of their children's education beyond the high school level. See opinion of Attorney General to Stan C. Broadway, Executive Director, N.C. State Education Assistance Authority, 50 N.C.A.G. 46 (1980).

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.

In order to facilitate vocational and college education and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No bonds, as this term is defined in this Article, are deemed to constitute a debt of the State, or of any political subdivision thereof or a pledge of the faith and credit of the State or of any political subdivision, but are payable solely from the funds of the Authority. All bonds shall contain on their faces a statement to the effect that neither the State nor the Authority is obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds provided under the provisions of this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this Article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1; 1979, c. 165, s. 2; 1987, c. 227, s. 3.)

CASE NOTES

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.

There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this Article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The favorable vote of at least a majority of the members of the board present at any meeting is required for the adoption of any resolution or motion or for other official action. The members of the board are entitled to the travel expenses, subsistence allowances and compensation provided in G.S. 138-5. These expenses and compensation shall be paid from funds provided under this Article, or as otherwise provided. (1965, c. 1180, s. 1; 1979, c. 165, s. 3.)

CASE NOTES

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-204. Powers of Authority.

The Authority is hereby authorized and empowered:

(1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;

(2) To establish rules and regulations concerning its acts and undertakings;

(3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;

(4) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(5) To employ, in its discretion, consultants, attorneys, accountants, and financial experts, superintendents, managers and such other employ-

ees and agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to the Authority by law;

(6) To receive and accept from any federal or private agency, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the State, from any municipality, county or other political subdivision thereof and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(7) To sue and to be sued; to have a seal and to alter the same at its pleasure; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with law to carry into effect the powers and purposes of the Authority;

(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this Article; provided, however, that nothing in this Article shall be construed to empower the Authority to engage in the business of banking or insurance.

(9) To collect loan repayments for loans awarded under the Teaching Fellows Program pursuant to G.S. 115C-363.23A if the loan repayment is outstanding for more than 30 days.

(10) To collect loan repayments for loans awarded from the Scholarship Loan Fund for Prospective Teachers pursuant to Article 32A of Chapter 115C of the General Statutes if the loan repayment is outstanding for more than 30 days. (1965, c. 1180, s. 1; 2002-126, s. 9.2(f).)

Editor's Note. — Session Laws 2002-126, s. 9.2(a), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina Teaching Fellows Commission relating to the collection of loans awarded under G.S. 115C-363.23A when the loan repayments are outstanding for more than 30 days are transferred from the North Carolina Teaching Fellows Commission to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 9.2(b), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Public Instruction relating to the collection of loan repayments for loans awarded under Article 32A of Chapter 115C of the General Statutes when the loans are outstanding for more than 30 days are transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

CASE NOTES

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-205. Title to property; use of State lands; offices.

(a) Title to any property acquired by the Authority shall be taken in the name of the Authority.

(b) The State hereby consents, subject to the approval of the Governor and Council of State, to the use of any other lands or property owned by the State, which are deemed by the Authority to be necessary for its purposes.

(c) The Authority may establish such offices in state-owned or rented structures as it deems appropriate for its purposes. (1965, c. 1180, s. 1.)

§ 116-206. Acquisition of obligations.

With the proceeds of bonds or any other funds of the Authority available therefor, the Authority may acquire from any bank, insurance company, or educational lending institution, eligible student obligations, or any interest or participation therein in such amount, at such price or prices and upon such terms and conditions as the Authority shall determine to be in the public interest and desirable to carry out the purposes of this Article. The Authority shall take such actions and require the execution of such instruments deemed appropriate by it to permit the recovery, in connection with any such obligations or any interest or participation therein acquired by the Authority, of the amount to which the Authority may be rightfully entitled, and otherwise to enforce and protect its rights and interest thereto. (1965, c. 1180, s. 1; 1967, c. 955, s. 2; 1971, c. 392, s. 2; 1987, c. 227, s. 4.)

CASE NOTES

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-207. Terms of acquisitions.

The Authority shall prescribe the terms, conditions and limitations upon which it will acquire a contingent or direct interest in any obligation and such terms, conditions and limitations shall include, but without limiting the generality hereof, the interest rate payable upon such obligations, the maturities thereof, the terms for payment of principal and interest, applicable life or other insurance which may be required in connection with any such obligation and who shall pay the premiums thereon, the safekeeping of assets pledged to secure any such undertaking, and any and all matters in connection with the foregoing as will protect the assets of the Authority. (1965, c. 1180, s. 1.)

§ 116-208. Construction of Article.

The provisions of this Article shall be liberally construed to the end that its beneficial purposes may be effectuated. (1965, c. 1180, s. 1.)

§ 116-209. Reserve Trust Fund created; transfer of Escheat Fund; pledge of security interest for payment of bonds; administration.

The appropriation made to the Authority under this Article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this Article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The State Treasurer shall be the custodian of the assets of the Authority and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers.

The trust fund is designated "Reserve Trust Fund" and shall be maintained by the Authority, except as otherwise provided, pursuant to the provisions of this Article, as security for or insurance respecting any bonds or other obligations issued by the Authority under this Article. The corpus of the Escheat Fund, including all future additions other than the income, are transferred to, and become, a part of the Reserve Trust Fund and shall be accounted for, administered, invested, reinvested, used and applied as provided in Chapter 116B of the General Statutes. The Authority may pledge and vest a security interest in all or any part of the Reserve Trust Fund by resolution adopted or trust agreement approved by it as security for or insurance respecting the payment of bonds or other obligations issued under this Article. The Reserve Trust Fund shall be held, administered, invested, reinvested, used and applied as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of this Article and Chapter 116B of the General Statutes. (1965, c. 1180, s. 1; 1979, c 165, s. 4; c. 467, s. 8; 1987, c. 227, s. 5.)

CASE NOTES

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority. — Since issuance of tax-exempt revenue bonds by the State Education Assistance Authority for purpose of financing loans to college students does not pledge the credit of the State or of any political subdivision thereof, a taxpayer can suffer no injury from the issuance of the bonds and has no interest therein except his general interest as a member of the public in good government pursuant to the North Carolina Constitution, and, consequently, a taxpayer has no standing to seek an injunction restraining actions of the Authority and its fiscal agent relating to the issuance of the bonds and the expenditure of the proceeds thereof. Nicholson v. State Educ. Assistance Auth., 275 N.C. 439, 168 S.E.2d 401 (1969).

Allegation Insufficient Basis for Injunctive Relief. — The allegation that, by expressing its intent to issue a further series of bonds, the Authority has indicated that "additional tax funds will be expended" unless enjoined is not sufficient basis for injunctive relief, since this allegation is consistent with a contemplated use of funds appropriated from tax revenues for "lawful functions" of the Authority, such as the payment of salaries and expenses of employees engaged in the performance of functions authorized by this section. Nicholson v. State Educ. Assistance Auth., 275 N.C. 439, 168 S.E.2d 401 (1969).

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.1. Provisions in conflict.

Any of the foregoing provisions of this Article which shall be in conflict with the provisions hereinbelow set forth shall be repealed to the extent of such conflict. (1967, c. 1177.)

CASE NOTES

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.2. Reserves.

The Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing any bonds that proceeds of such bonds may be used to establish reserve accounts in any trustee or banking institution or otherwise as determined by the Authority, for securing such bonds and facilitating the making of student loans and acquiring student obligations, to provide for the payment of interest on such bonds for such period of time as the Authority shall determine, and for such other purposes as will facilitate the issuance of bonds at rates of interest and upon terms deemed reasonable by the Authority and will, in the Authority's judgment, facilitate carrying out the purposes of this Article. (1967, c. 1177; 1971, c. 392, s. 3.)

§ 116-209.3. Additional powers.

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account. (1967, c. 1177; 1971, c. 392, s. 4; 1979, c. 165, s. 5; 1987, c. 227, s. 6; 1999-460, s. 12.)

CASE NOTES

Sections 116-209.1 to 116-209.15 do not unconstitutionally authorize use of public funds. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is expected that a student loan will inure to the private benefit of the person who obtains it. It is equally true that the education provided throughout the entire school system is intended to inure to the benefit of the individual who obtains it. However, the fact that the individual obtains a private benefit cannot be considered sufficient ground to defeat the execution of the paramount public purpose of encouraging education. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Whether the student loan program is wise or unwise is for determination by the General Assembly. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Assistance of Federal Government Is Prerequisite to Functioning of Student Loan Program. — The assistance of the federal government and coordination with its program are prerequisite to the functioning of the North Carolina student loan program. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

And Only Loans Qualifying for Assistance under Federal Statutes May Be Made. — The only student loans the Authority is authorized to make or purchase are student loans which qualify under the federal statutes for federal assistance in respect of interest subsidy and guaranty. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is implicit in the provisions of G.S. 116-209.1 to 116-209.15 that the General Assembly contemplated and intended that no loans would be made from the proceeds from the sale of tax-exempt revenue bonds except student loans made in compliance with the standards prescribed by federal legislation and therefore qualified for assistance. Seemingly, the General Assembly realized that its specification of more precise standards for "student loans" might impede that functioning of the Authority and render it unable to qualify from time to time for the federal assistance upon which its program depended. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

The provisions of this section and § 116-209.6 disclose that the General Assembly is well aware of the federal, State and private programs of low-interest insured loans to students in institutions of higher education and other post-secondary schools. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Borrowers Unable to Make Payment until Completion of Education. — Persons who obtain "student loans" are unable to make payment on account of interest or principal until completion of their education by graduation or otherwise. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

OPINIONS OF ATTORNEY GENERAL

Advancement of Funds to Make Federal Family Education Loans. — The State Education Assistance Authority has the authority to create and administer an institutional, student loan program under which the authority would advance funds from the North Carolina Student Loan Fund to qualified institutions to enable those institutions to make Federal Family Education Loans, under the Higher Education Act of 1965, as amended, directly to and for the convenience of their graduate and professional students. See opinion of Attorney General to Steven E. Brooks, Executive Director, North Carolina State Education Assistance Authority, 2000 N.C. AG LEXIS 9 (5/5/2000).

§ 116-209.4. Authority to issue bonds.

The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in such principal amounts as the Board of Directors shall determine to be necessary. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series ________," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 30 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this Article.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in G.S. 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Article and the provisions of the resolution authorizing the issuance of such bonds.

The Authority is authorized to provide by resolution or in any trust agreement for the issuance of revenue refunding bonds of the Authority for the purpose of refunding, or advance refunding and paying, any bonds then outstanding, which have been issued under the provisions of this Article, including the payment of any redemption premium and of any interest accrued or to accrue up to the date of redemption of the bonds, and, if deemed advisable by the Authority, for making student loans or acquiring obligations under this Article. The issuance of the revenue refunding bonds, the maturities and other details, the rights of the holders and the rights, duties and obligations of the Authority, shall be governed by the appropriate provisions of this Article relating to the issuance of revenue bonds. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article. If sold, in addition to any other authorized purpose, the proceeds may be deposited in an escrow or other trust fund and invested, in whole or in part, and with the earnings from the investments, may be applied to the purchase or to the redemption prior to, or to payment at maturity, of outstanding bonds, all as provided by resolution or in trust agreement securing the bonds. (1967, c. 1177; 1971, c. 392, ss. 5-7; 1979, c. 165, s. 6.)

CASE NOTES

Constitutionality. — The people of North Carolina constitute the State's greatest resource. Where bond proceeds are to be used solely to make loans to meritorious North Carolinians of slender means and thereby minimize the number of qualified persons whose education or training is interrupted or abandoned for lack of funds, the bond proceeds are used for a public purpose when used to make such loans. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.5. Bond resolution.

The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the purchase or sale of obligations, the making of student loans, the insurance of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this Article and may be payable, together with other expenses of operation and administration under this Article incurred by the Authority, from the Loan Fund.

In the discretion of the Authority, any bonds issued under the provisions of this Article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees, penalties, charges, proceeds from collections, grants, subsidies, donations and other funds and revenues to be received therefor. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to student loans, the acquisition of obligations, insurance, the fees, penalties and other charges to be fixed and collected, the sale or purchase of obligations or any part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of carrying out the purposes for which such bonds shall be issued.

In addition to all other powers granted to the Authority by this Article, the Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this Article any moneys received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriation; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation. (1967, c. 1177; 1971, c. 392, s. 8.)

§ 116-209.6. Revenues.

The Authority is authorized to fix and collect fees, charges, interest and premiums for making or insuring student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this Article. The Authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the Authority's functions under this Article. The Authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the Authority, provide for the transfer of surplus money in the sinking fund to the credit of the Loan Fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 1177.)

Cross References. — For additional powers of the State Education Assistance Authority, see G.S. 116-209.3.

CASE NOTES

Sections 116-209.1 to 116-209.15 do not unconstitutionally authorize use of public funds. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is expected that a student loan will inure to the private benefit of the person who obtains it. It is equally true that the education provided throughout the entire school system is intended to inure to the benefit of the individual who obtains it. However, the fact that the individual obtains a private benefit cannot be considered sufficient ground to defeat the execution of the paramount public purpose of encouraging education. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

The provisions of this section and § 116-209.3 disclose that the General Assembly is well aware of the federal, State and private programs of low-interest insured loans to students in institutions of higher education and other post-secondary schools. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.7. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the Article, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this Article and such resolution may provide. (1967, c. 1177.)

§ 116-209.8. Remedies.

Any holder of bonds issued under the provisions of this Article or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by such resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans. The Authority may provide in any trust agreement securing the bonds that any such rights may be enforced for and on behalf of the holders of bonds by the trustee under such trust agreement. (1967, c. 1177; 1971, c. 392, s. 9.)

§ 116-209.9. Negotiability of bonds.

All bonds issued under the provisions of this Article shall have and are hereby declared to have all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code of the State but no provision of such Code respecting the filing of a financial statement to perfect a security interest shall be deemed applicable to or necessary for any security interest created in connection with the issuance of any such bonds. (1967, c. 1177; 1971, c. 392, s. 10.)

§ 116-209.10. Bonds eligible for investment.

Bonds issued by the Authority under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 1177.)

CASE NOTES

Whether tax-exempt revenue bonds issued under § 116-209.4 should be approved for investment by fiduciaries and for deposit "for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law," as set forth in this section, is for determination by the General Assembly. Whether the purchase of these bonds is wise or unwise is for determination by the investor. State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.11. Additional pledge.

Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this Article, to insure or guarantee the payment of interest or principal on student loans, or otherwise to aid in promoting or facilitating student loans. (1967, c. 1177.)

§ 116-209.12. Credit of State not pledged.

Bonds issued under the provisions of this Article shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Article shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this Article may be made payable from funds provided pursuant to this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 1177.)

CASE NOTES

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority. — Since issuance of tax-exempt revenue bonds by the State Education Assistance Authority for purpose of financing loans to college students does not pledge the credit of the State or of any political subdivision thereof, a taxpayer can suffer no injury from the issuance of the bonds and has no interest therein except his general interest as a member of the public in good government pursuant to the North Carolina Constitution, and, consequently, a taxpayer has no standing to seek an injunction restraining actions of the Authority and its fiscal agent relating to the issuance of the bonds and the expenditure of the proceeds thereof. Nicholson v. State Educ. Assistance Auth., 275 N.C. 439, 168 S.E.2d 401 (1969).

Cited in State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.13. Tax exemption.

The exercise of the powers granted by this Article in all respects will be for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this Article or upon the income therefrom, and the bonds issued under the provisions of this Article shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. (1967, c. 1177; 1995, c. 46, s. 9.)

CASE NOTES

Constitutionality. — See State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 116-209.14. Annual reports.

The Authority shall, following the close of each fiscal year, publish an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report shall set forth a complete operating and financial statement covering the operations of the Authority during the year. The operations of the Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1967, c. 1177; 1979, c. 165, s. 7; 1983, c. 913, s. 20.)

§ 116-209.15. Merger of trust fund.

The Authority may merge into the Loan Fund the trust fund established pursuant to G.S. 116-209 hereof and may transfer from such trust fund to the credit of the Loan Fund all money, investments and other assets and resources credited to such trust fund, for application and use in accordance with the provisions of this Article pertaining to the Loan Fund, including the power to pay expenses of the Authority from the Loan Fund to the extent that other funds are not available therefor. (1967, c. 1177.)

CASE NOTES

Applied in Nicholson v. State Educ. Assistance Auth., 275 N.C. 439, 168 S.E.2d 401 (1969).

§ 116-209.16. Other powers; criteria.

The Authority, in addition to all the powers more specifically vested hereunder, shall have all other powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the power to receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money, any insurance or guarantee of any student loan or student obligations, any loans, advances, contributions, interest subsidies or any other assistance from any federal or State agency or other entity; to pledge or assign any money, charges, fees or other revenues and any proceeds derived by the Authority from any student loans, obligations, sales of property, insurance or other sources; to borrow money and to issue in evidence thereof revenue bonds of the Authority for the purposes of this Article and to issue revenue refunding bonds; to conduct studies and surveys respecting the needs for financial assistance of residents of the State respecting education beyond the high school level.

In carrying out the powers vested and the responsibilities imposed under this Article, the Authority shall be guided by and shall observe the following criteria and requirements, the determination of the Authority as to compliance with such criteria and requirements being final and conclusive:

(1) Any student loan, grant or other assistance provided by the Authority to any student shall be necessary to enable the student to pursue his education above the high school level; and

(2) No student loan, grant or other financial assistance shall be provided to any student by the Authority except in conformity with the provisions of this Article and to carry out the purposes hereof.

The Authority shall by rules and regulations prescribe other conditions, criteria and requirements that it shall deem necessary or desirable for providing financial assistance to students under this Article upon a fair and equitable basis, giving due regard to the needs and qualifications of the students and to the purposes of this Article. (1971, c. 392, s. 11.)

§ 116-209.17. Establishment of student assistance program.

The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for eligible needy students at public or private institutions in this State and, with respect to loans, public, and private institutions located elsewhere. This objective shall be accomplished, consistent with Federal law or regulation, through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State, institutional or other sources, be met through work-study programs, loans, grants and out-of-term employment, or a combination of these forms of assistance. With respect to grants made pursuant to this Article, no student is eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education. (1971, c. 392, s. 11; 1979, c. 165, s. 8; 1987, c. 227, s. 7.)

§ 116-209.18. Powers of Authority to administer student assistance program.

In order to accomplish the purposes of this Article the Authority is authorized:

(1) To receive from the general fund or other sources such sums as the General Assembly may authorize from time to time for such purposes, and to receive from any other donor, public or private, such sums as may be made available, and to cause such sums to be disbursed for the purposes for which they have been provided;
(2) To establish such criteria as the Authority shall deem necessary or desirable for determining the need of students for grants under this Article, as opposed to other forms of financial assistance, and for deciding who shall receive grants;
(3) To prescribe the form and to regulate the submission of applications for assistance and to prescribe the procedures for considering and approving such applications;
(4) To provide for the making of, and to make, grants under this Article under such terms and conditions as the Authority shall deem advisable;
(5) To encourage educational institutions to increase the resources available for financial assistance; to prescribe such formulas for institutional maintenance of effort as the Authority may determine to be consistent with the purposes of this Article;
(6) To provide by contract for the administration of all or any portion of the student assistance program by nonprofit organizations or corporations, pursuant to regulations and criteria established by the Authority;
(7) To serve, on designation by the Governor, or as may otherwise be provided by federal law, as the State agency to administer such statewide programs of student assistance as shall be established from time to time under federal law; and
(8) To have all other powers and authority necessary to carry out the purposes of the student assistance program, including, without limitation, all the powers given to the Authority by G.S. 116-204 and by other provisions of the General Statutes. (1971, c. 392, s. 11.)

§ 116-209.19. Grants to students.

The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes and community colleges created and existing under Chapter 115D of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the State Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts" for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students; such as nonrepayable awards under the Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979,c. 165, s. 9; 1983, c. 717, s. 35; 1985 (Reg. Sess., 1986), c.955, ss. 38, 39; 1987, c. 227, s. 8; c. 564, s. 23; 2006-203, s. 54; 2008-192, s. 9.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 54, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "State Budget Act" for "Executive Budget Act" in the last sentence of the first paragraph; and deleted the former last paragraph, which read: "Prior to taking any action under this subsection, the Secretary of Administration may consult with the Advisory Budget Commission."

Session Laws 2008-192, s. 9, effective August 1, 2008, inserted "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts,'" near the end of the first paragraph.

§ 116-209.20. Public purpose.

No expenditure of funds under this Article shall be made for any purpose other than a public purpose. (1971, c. 392, s. 11.)

§ 116-209.21. Cooperation of the Board of Governors of the University of North Carolina.

The Board of Governors of the University of North Carolina shall provide the secretariat for the Authority. The Executive Director of the Authority, who shall be its principal executive officer, shall be elected by the Board of Directors of the Authority on nomination of the President of the University of North Carolina. (1971, c. 392, s. 11; c. 1244, s. 14.)

§ 116-209.22. Constitutional construction.

The provisions of this Article are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1971, c. 392, s. 11.)

§ 116-209.23. Inconsistent laws inapplicable.

Insofar as the provisions of this Article are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Article shall be controlling, except that no provision of the 1971 amendments to this Article shall apply to scholarships for children of war veterans as set forth in Article 4 of Chapter 165, as amended. (1971, c. 392, s. 11.)

§ 116-209.24. Parental loans.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that the making and insuring of loans to the eligible parents of students is fully consistent with and furthers the long established policy of the State to encourage, promote and assist education as more fully set forth in G.S. 116-201(a).

(b) Definitions. — As used in this section, the following terms shall have the following meanings:

(1) "Obligations", "student obligations", or "student loan obligations" as defined under G.S. 116-201(b)(7) includes, unless the context indicates a contrary intent, parental obligations.

(2) "Parent" means a student's mother, father, adoptive parent, or legal guardian of the student if such guardian is required by court order to use his or her own financial resources to support that student.

(3) "Parental loans" means loans made or guaranteed by the Authority to a parent of an eligible student.

(4) "Parental obligations" means obligations evidencing loans made pursuant to subsection (c) of this section.

(5) "Student loans" includes, unless the context indicates a contrary intent, parental loans.

(c) Parental Assistance. — The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of loans to parents of students in order to facilitate the vocational and college education of such students who are enrolled or to be enrolled in eligible institutions. The Authority is also authorized to provide such other services and loan assistance to parents of students as the Authority shall deem necessary or desirable for carrying out the purpose of this section and for qualifying for loans, grants, insurance, and other benefits and assistance under any program of the United States now or hereafter authorized fostering loans to eligible parents of students.

(d) Authorization to Buy and Sell Parental Obligations. — The Authority is hereby authorized and empowered to buy and sell parental obligations.

(e) Authorization to Issue Bonds. — The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds or revenue bonds, as such terms are defined in G.S. 116-201(4), in conformity with provisions of this section. (1981, c. 794, s. 1; 1987, c. 227, s. 9.)

§ 116-209.25. Parental Savings Trust Fund.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. — There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Funds. — The Authority is authorized to accept, hold, invest, and disburse contributions, and interest earned on such contributions, from qualified parents and other interested parties as trustee of the Parental Savings Trust Fund. The Authority shall hold all contributions to the Parental Savings Trust Fund, and any earnings thereon, in a separate trust fund and shall invest the contributions in accordance with this section. The assets of the Parental Savings Trust Fund shall at all times be preserved, invested, and expended solely for the purposes of the trust fund and shall be held in trust for the parents and other interested parties and their designated beneficiaries. Nothing in this Article shall be construed to prohibit the Authority from accepting, holding, and investing contributions from persons who reside outside of North Carolina. Neither the contributions to the Parental Savings Trust Fund, nor the earnings thereon, shall be considered State moneys, assets of the State, or State revenue for any purpose.

(c1) Investments. — The Authority shall determine an appropriate investment strategy for the Parental Savings Trust Fund. The strategy may include a combination of fixed income assets and preferred or common stocks issued by any company incorporated, or otherwise located within or without the United States, or other appropriate investment instruments to achieve long-term return through a combination of capital appreciation and current income. The Authority may deposit all or any portion of the Parental Savings Trust Fund for investment either with the State Treasurer, or in the individual, common, or collective trust funds of an investment manager or managers that meet the requirements of this subsection. Contributions to the Parental Savings Trust Fund on deposit with the State Treasurer shall be invested by the State Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. Contributions to the Parental Savings Trust Fund may be invested in the individual, common, or collective trust funds of an investment manager provided that the investment manager meets both of the following conditions:

(1) The investment manager has assets under management of at least one hundred million dollars ($100,000,000) at all times.

(2) The investment manager is subject to the jurisdiction and regulation of the United States Securities and Exchange Commission.

(d) Administration of the Trust Fund. — The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund. The Authority is further authorized to obtain the services of such investment advisors or program managers as may be necessary for the proper administration and marketing and investment strategy for the Parental Savings Trust Fund.

(e) Loan Program. — The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program.

(f) Limitations. — Nothing in this section shall be construed to create any obligation of the Authority, the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate of return or other return for any contribution to the Parental Savings Trust Fund and the payment of interest or other return on any contribution to the Parental Savings Trust Fund. (1996, 2nd Ex. Sess., c. 18, s. 16.7; 2000-177, s. 11; 2001-243, s. 1; 2002-159, s. 19.)

§ 116-209.26. (Repealed effective July 1, 2010) Education Access Rewards North Carolina Scholars Fund.

(a) The following definitions apply to this section:

(1) Academic year. — A period of time in which a student in matriculated status is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) Eligible postsecondary institution. — A school that is any of the following:

a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);

b. A community college as defined in G.S. 115D-2(2); or

c. An institution as defined in G.S. 116-22(1).

(3) Matriculated status. — Being recognized as a first-time candidate for a degree or certificate, exclusive of any course credits earned while in high school, in a defined program of study at an eligible postsecondary institution.

(4) Title IV. — Title IV of the Higher Education Act of 1965, as amended.

(b) There is established the Education Access Rewards North Carolina Scholars Fund. The purpose of the Fund is to provide grants to certain eligible students to enable them to obtain an education beyond the high school level at certain postsecondary institutions in North Carolina without incurring student loans to meet their financial need during the first two years of their postsecondary education. The State Education Assistance Authority (SEAA) shall administer the Fund.

(c) Criteria for awarding the grants shall be developed by the SEAA and include all of the following:

(1) The student must qualify as a legal resident of North Carolina, a legal resident of the United States, and as a resident for tuition purposes in accordance with G.S. 116-143.1.

(2) Within seven months of the fiscal year in which the grant is to be disbursed, the student must have:

a. Graduated from a North Carolina high school;

b. Received a General Education Development (GED) certificate from a North Carolina institution; or

c. Completed a high school education in a home school setting meeting the qualifications and requirements under G.S. 115C-564.

(3) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status on a full-time basis at an eligible postsecondary institution in North Carolina.

(4) The student must be an eligible dependent student. For purposes of this subdivision, an "eligible dependent student" is a student who:
  a. Either is classified as dependent for the Title IV programs or is a ward or dependent of the court; and
  b. Demonstrates total family income not exceeding two hundred percent (200%) of the applicable federal poverty guideline, according to standards set by the SEAA and measured using data elements available to the SEAA from the Free Application for Federal Student Aid (FAFSA) or such other source as the SEAA may deem appropriate.

(5) The student must meet all other eligibility requirements for the federal Pell Grant.

(6) In order to retain eligibility for a grant for the student's second academic year, the student must meet achievement standards by maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution in which the student is enrolled.

(7) The student may not receive a grant in an amount that, when combined with the federal Pell Grant, exceeds the student's cost of attendance as defined under Title IV.

(8) The student may not receive a grant under this section for more than the equivalent of two academic years.

(d) The maximum grant for which a student is eligible under this section shall be four thousand dollars ($4,000) per academic year. In the event there are not sufficient funds to provide each eligible student with the maximum grant, it is the intent of the General Assembly that eligible students who have matriculated into an eligible postsecondary institution in North Carolina with at least one academic year of college credit receive the maximum grant amount and all other eligible students shall receive a reduced grant amount.

(e) The grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the SEAA not inconsistent with this section.

(f) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by December 1, 2009, and by each December 1 thereafter, regarding the Fund and grants awarded from the Fund.

(g) Grant funds unexpended shall remain available to the SEAA for future grants to be awarded under this section.

(h) No funds appropriated from the Escheat Fund to the Education Access Rewards North Carolina Scholars Fund shall be used for a grant awarded under this section to a student who is an undergraduate student at an institution as defined in G.S. 116-22(1); however, funds appropriated from the General Fund to the Education Access Rewards North Carolina Scholars Fund may be used for a grant awarded under this section to a student who is an undergraduate student at an institution as defined in G.S. 116-22(1). (2007-323, s. 9.7(a); 2008-107, s. 9.2(a), (b).)

Section repealed effective July 1, 2010. — This section is repealed effective July 1, 2010, by Session Laws 2009-451, s. 9.2(e).

Editor's Note. — Session Laws 2007-323, s. 32.6, made this section effective July 1, 2007.

Session Laws 2007-323, s. 9.7(b)-(d), as amended by Session Laws 2008-107, s. 9.2 (c) and (d), and as amended by Session Laws 2008-118, s. 1.3(f), provides: "(b) There is appropriated from the General Fund to the State

Education Assistance Authority the sum of twenty-seven million six hundred five thousand two hundred ten dollars ($27,605,210) for the 2007-2008 fiscal year. Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2008-2009 fiscal year the sum of sixteen million two hundred twenty-five thousand dollars ($16,225,000) shall be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

"(c) There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of fifty million dollars ($50,000,000) for the 2008-2009 fiscal year.

"(d) The Director of the Budget shall include the amount necessary to fully fund the EARN grants for all eligible students in the 2009-2011 continuation budget."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 9.9, provides: "Effective June 30, 2008, the unencumbered balance of the funds appropriated in 2007-2008 to The University of North Carolina Board of Governors and the State Education Assistance Authority in Section 9.7 of S.L. 2007-323 shall revert to the General Fund. The amount reverted shall be no less than twenty-seven million six hundred five thousand two hundred ten dollars ($27,605,210)."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 9.2(d), provides: "Notwithstanding G.S. 116-209.26(d), the maximum grant for which a student is eligible for an EARN Scholarship shall be two thousand dollars ($2,000) for the 2009-2010 academic year. The State Education Assistance Authority shall pay the full amount of the grants awarded pursuant to this section in the 2009-2010 fall academic semester."

Session Laws 2009-451, s. 9.2(f), provides: "The campus financial aid offices at each eligible postsecondary institution as defined in G.S. 116-209.26 are encouraged to work with EARN recipients to secure replacement financial aid for the 2010-2011 academic year and appropriate subsequent academic years."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, ss. 9.2(a) and (b), effective July 1, 2008, and applicable for academic years beginning on or after July 1, 2008, made minor grammatical changes in subdivisions (a)(2)a and (a)(2)b, added "any of the following" at the end of subdivision (a)(2)a; added subdivision (a)(2)c; and added subsection (h).

§§ 116-209.27 through 116-209.29: Reserved for future codification purposes.

§ 116-209.30. Social Workers' Education Loan Fund.

(a) There is established the Social Workers' Education Loan Fund to be administered by the State Education Assistance Authority, in consultation with the Department of Health and Human Services, to attract trained social workers into public child welfare positions in all county departments of social services in the State. The Fund shall provide 25 four-year undergraduate and 10 two-year graduate scholarship loans per year.

(b) The Authority, in consultation with the Department of Health and Human Services, shall develop the following criteria to administer the Fund:

(1) All students shall be enrolled in an institution of higher education in North Carolina in an accredited bachelors of social work or masters of social work program;

(2) All students shall be residents of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1;

(3) All students shall enter into a legal agreement and promissory note with the Authority to accept employment in public child welfare in exchange for receiving any funds, which agreement shall include stipulation that the student agrees to accept employment in rural or other need-based counties; and

(4) Any additional criteria that the Authority considers necessary to administer the program effectively, including:

a. Consideration of the appropriate numbers of minority students and students from diverse socio-economic backgrounds to receive funds pursuant to this section;

b. Consideration of what rural or other need-based areas of the State shall be considered appropriate for work after graduation pursuant to subdivision (3) of this subsection;

c. Consideration of the academic qualifications of the individuals applying to receive funds; and

d. Consideration of the commitment the individuals applying to receive funds demonstrate to the profession of social work.

(c) The Authority shall ensure that the loan amounts are limited as follows:

(1) For a student pursuing a bachelors of social work degree, four thousand dollars ($4,000) per year for a maximum of four years; and

(2) For a student pursuing a masters of social work degree, five thousand dollars ($5,000) per year for a maximum of two years.

(d) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:

(1) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works for a public child welfare agency in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan, whether four thousand dollars ($4,000) or five thousand dollars ($5,000);

(2) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who works in public child welfare in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled;

(3) The individual who graduates with a bachelors of social work degree or a masters of social work degree and who does not work in public child welfare in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest; and

(4) The individual who does not graduate with a bachelors of social work degree or a masters of social work degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors of social work degree or a masters of social work degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(e) The State Education Assistance Authority, in consultation with the Department of Health and Human Services, shall adopt rules to implement the Social Workers' Education Loan Fund as described in this section. (1993 (Reg. Sess., 1994), c. 769, s. 17.16; 1997-443, s. 11A.118(a).)

§§ 116-209.31, 116-209.32: Reserved for future codification purposes.

§ 116-209.33. Scholarship Loan Fund for Prospective Teachers.

(a) There is established a revolving fund known as the "Scholarship Loan Fund for Prospective Teachers". The purpose of the Fund is to provide scholarship loans to qualified individuals who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) The State Education Assistance Authority, in consultation with the State Board of Education, shall develop criteria for awarding scholarship loans from the Fund. These criteria shall include:

(1) Measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals.

(2) North Carolina residency. — For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.

(3) The geographic areas or subjects of instruction in which the demand for teachers is greatest.

(4) To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.

(5) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including the following:

  a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.

  b. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) The State Education Assistance Authority may earmark each year up to twenty percent (20%) of the funds available for scholarship loans under this section for awards to applicants for the Teacher Assistant Scholarship Fund established in G.S. 116-209.35. (1957, c. 1237; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1; 1987, c. 738, s. 198(b); 1993, c. 260, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 18.10; 1997-506, s. 40; 2005-276, ss. 9.17(b), 9.17(c).)

Editor's Note. — This section was formerly codified as G.S. 115C-468. It was recodified as G.S. 116-209.33 by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

Sections 115C-468 through 115C-471 were formerly G.S. 116-171 through 116-174. They were transferred to Article 32A of Chapter 115C by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 10.1.

Session Laws 2002-126, s. 9.2(b), provides: "The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of

Public Instruction relating to the collection of loan repayments for loans awarded under Article 32A of Chapter 115C of the General Statutes when the loans are outstanding for more than 30 days are transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer has all of the elements of a Type II transfer as defined by G.S. 143A-6."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2005-276, s. 9.17(a), provides: "The Scholarship Loan Fund for Prospective Teachers is transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 116-209.34. Fund administered by State Education Assistance Authority; rule-making authority.

(a) The State Education Assistance Authority shall establish the terms and conditions for the scholarship loans consistent with the following:

(1) The loan amount shall be not more than four thousand dollars ($4,000) per academic school year for a maximum of four years for applicants who are pursuing a college degree to become a teacher.

(2) All scholarship loans shall be evidenced by notes made payable to the Authority that bear interest at the rate of ten percent (10%) per year, beginning September 1 after graduation, or immediately after termination of the scholarship loan, whichever is earlier.

(3) A scholarship loan shall be terminated upon the recipient's withdrawing from school or a finding by the Authority that the recipient fails to meet the standards set by the Authority. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) The Authority shall forgive a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Authority shall also forgive a four-year loan if, within seven years after graduation, the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. For loans of less than four years, the Authority shall forgive one year for each year the recipient teaches, within four years of graduation, at a North Carolina public school or a school operated by the United States government in North Carolina.

(5) The Authority may forgive or reduce any loan payment if the Authority considers that extenuating circumstances exist that would make teaching or repayment impossible.

(6) The Authority shall ensure that all repayments, including the accrued interest, are placed in the Fund.

(b) The State Education Assistance Authority, in consultation with the State Board of Education, shall adopt rules to implement G.S. 116-209.33, 116-209.34, and 116-209.35. (1957, c. 1237; 1973, c. 581, ss. 1, 2; 1975, c. 750, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1; 1987, c. 738, ss. 198(c), (d), (e); 1989 (Reg. Sess., 1990), c. 1066, s. 95; 1993, c. 260, s. 2; 1995, c. 435, s. 1; 2005-276, ss. 9.17(b), 9.17(d).)

Editor's Note. — This section was formerly codified as G.S. 115C-471. It was recodified as G.S. 116-209.34 by Session Laws 2005-276, s. 9.17(b), effective January 1, 2006, and applicable to scholarship loans awarded on or after that date.

§ 116-209.35. Teacher Assistant Scholarship Fund.

(a) There is established the Teacher Assistant Scholarship Fund. The purpose of the Fund is to provide scholarships to teacher assistants who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) Criteria for awarding the scholarships shall be developed by the Board of Governors of The University of North Carolina in consultation with the State Board of Education and the State Board of Community Colleges and shall include all of the following:

(1) An applicant shall be employed full time as a teacher assistant in North Carolina.
(2) An applicant shall be enrolled in an accredited institution of higher education in North Carolina pursuing teacher licensure.
(3) An applicant shall be a resident of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.
(4) Any additional criteria that the Board of Governors considers necessary to administer the Fund effectively, including all of the following:
    a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.
    b. Consideration of the academic qualifications of the individuals applying to receive funds.
    c. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) The scholarships shall be available for part-time or full-time course work through all off-campus or distance education teacher education programs.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Teacher Assistant Scholarship Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) shall provide that information to the appropriate counselors in each local school system and shall charge those counselors to inform teacher assistants about the scholarships and to encourage teacher assistants to apply for the scholarships.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by December 1 each year regarding the Fund and scholarships awarded from the Fund. (2001-424, s. 31.5(a); 2006-95, s. 2.3; 2007-457, s. 1.)

§ **116-209.36:** Repealed by Session Laws 2008-107, s. 9.1(a), effective July 1, 2008.

Editor's Note. — Session Laws 2008-107, s. 9.1(b), provides: "All financial obligations to any student awarded a scholarship loan from the Coaching Scholarship Loan Fund before July 1, 2008, shall be fulfilled provided the student remains eligible under the provisions of the Coaching Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Coaching Scholarship Loan Fund before July 1, 2008, and the State Education Assistance Authority remain enforceable and the provisions of G.S. 116-209.36 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 116-209.37: Reserved for future codification purposes.

§ 116-209.38. (Repealed effective July 1, 2011) Future Teachers of North Carolina Scholarship Loan Fund.

(a) There is established the Future Teachers of North Carolina Scholarship Loan Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand five hundred dollars ($6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior years. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 150 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

(1) The student is one who either: (i) maintained a "B" or better average in college and is enrolled as a junior or senior in a teacher preparation program at any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's Community Colleges System, maintained a "B" or better average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.

(2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within five years after graduation.

(3) Any additional criteria that the Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by December 1 each year regarding the Fund and scholarship loans awarded from the Fund. (2005-276, s. 9.11(a); 2006-95, s. 2.5; 2007-323, s. 9.9.)

Section repealed effective July 1, 2011. — This section is repealed effective July 1, 2011, by Session Laws 2009-451, s. 9.18(c).

Editor's Note. — Session Laws 2009-451, s. 9.18(a), provides: "Notwithstanding any other provision of law, scholarship loans from the Future Teachers of North Carolina Scholarship Loan Fund established by G.S. 116-209.38 for the 2010-2011 academic year shall be awarded only to students who are seniors for that academic year and who are scheduled to graduate no later than the end of the 2010-2011 academic year."

Session Laws 2009-451, s. 9.18(b), provides: "All financial obligations to any student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011, shall be fulfilled provided the student remains eligible under the provisions of the Future Teachers of North Carolina Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011, and the State Education Assistance Authority remain enforceable, and the provisions of G.S. 116-209.38 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2011."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 116-209.39: Reserved for future codification purposes.

§ 116-209.40. John B. McLendon Scholarship Fund.

(a) Fund Established. — The John B. McLendon Scholarship Fund is established as a special fund. The Fund shall be administered by the State Education Assistance Authority.

(b) Fund Earnings, Assets, and Balances. — Interest on the Fund shall be credited to the assets of the Fund and shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.

(c) Fund Purpose. — The interest from the Fund shall be used to provide two leadership scholarships, one for a male athlete student and one for a female athlete student, at each of North Carolina's Historically Black Colleges and Universities that are accredited by the Southern Association of Colleges and

Schools under the standards of the College Delegate Assembly of the Association, except that Bennett College shall receive funding for two leadership scholarships for two female athlete students. The scholarships shall be awarded on an annual basis pursuant to this section. The amount of each scholarship shall be one thousand two hundred fifty dollars ($1,250) per academic year.

(d) Eligibility Requirements for a Scholarship. — To be eligible to receive a scholarship under this section, a student must meet all of the following requirements:

(1) The student must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status at an Historically Black College or University that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of the Association.

(2) The student must be an athlete participating on a varsity team at the college or university.

(3) The student must demonstrate outstanding leadership qualities, be involved in the college or university community, and maintain high academic standards.

(4) The student must be designated as a recipient for the scholarship by the college or university at which the student has matriculated status.

(e) College or University Recommendations for Scholarship Recipients. — The Chancellor or President, as appropriate, and the Board of Trustees of each Historically Black College or University may designate students as recipients of the John B. McLendon Scholarships under this section.

(f) Rule-Making Authority. — The State Education Assistance Authority may adopt rules to administer this Fund.

(g) Reporting Requirement. — The State Education Assistance Authority shall report no later than June 1, 2008, and annually thereafter to the Joint Legislative Education Oversight Committee regarding the scholarships awarded pursuant to this section. (2007-323, s. 9.18(a).)

Editor's Note. — Session Laws 2007-323, s. 9.18.(c), made this section effective July 1, 2007.

Session Laws 2007-323, s. 9.18(b), provides: "Of the funds appropriated by this act to the State Education Assistance Authority for the 2007-2008 fiscal year the sum of five hundred thousand dollars ($500,000) shall be allocated to the John B. McLendon Scholarship Fund established by G.S. 116-209.40, as enacted by subsection (a) of this section."

Session Laws 2007-323, s. 9.18.(c) provides, in part, that no scholarship shall be awarded under this section prior to the academic year of 2008-2009.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

ARTICLE 24.

Learning Institute of North Carolina.

§§ 116-210, 116-211: Repealed by Session Laws 1979, c. 744, s. 8.

Article 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

§ 116-212. Campus of state-supported institution of higher education subject to curfew.

The chancellor or president of any state-supported institution of higher learning may designate periods of time during which the campuses of such institutions and designated buildings and facilities connected therewith are off-limits and subject to a curfew as to all persons who are not faculty members, staff personnel, currently enrolled students of that institution, local law-enforcement officers, members of the National Guard on active duty, members of the General Assembly, the Governor of North Carolina and/or his designated agents, persons authorized by the chief administrative officer of the institution or his designated agent, and any person who satisfactorily identifies himself as a reporter for any newspaper, magazine, radio or television station. Any person not herein authorized who comes onto or remains on said campus in violation of this section shall be punished as set out in G.S. 116-213. (1969, c. 860, s. 1; 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in the first sentence.

§ 116-213. Violation of curfew a misdemeanor; punishment.

(a) Any person who during such period of curfew utilizes sound-amplifying equipment of any kind or nature upon the premises subject to such curfew in an educational, administrative building, or in any facility owned or controlled by the State or a State institution of higher learning, or upon the campus or grounds of any such institution, without the permission of the administrative head of the institution or his designated agent, shall be guilty of a Class 2 misdemeanor. For the purposes of this section the term "sound-amplifying equipment" shall mean any device, machine, or mechanical contrivance which is capable of amplifying sound and capable of delivering an electrical input of one or more watts to the loudspeaker, but this section shall not include radios and televisions.

(b) Any person convicted of violating any provision of G.S. 116-212 or 116-213, or who shall enter a plea of guilty to such violation or a plea of nolo contendere, shall be guilty of a Class 2 misdemeanor. (1969, c. 860, ss. 2, 3; 1993, c. 539, s. 895; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 116-214 through 116-218: Reserved for future codification purposes.

ARTICLE 26.

Liability Insurance or Self-Insurance.

§ 116-219. Authorization to secure insurance or provide self-insurance.

The Board of Governors of the University of North Carolina (hereinafter referred to as "the Board") is authorized through the purchase of contracts of insurance or the creation of self-insurance trusts, or through combination of such insurance and self-insurance, to provide individual health-care practitioners with coverage against claims of personal tort liability based on conduct within the course and scope of health-care functions undertaken by such individuals as employees, agents, or officers of (i) the University of North Carolina, (ii) any constituent institution of the University of North Carolina, (iii) the University of North Carolina Hospitals at Chapel Hill, or (iv) any health-care institution, agency or entity which has an affiliation agreement with the University of North Carolina, with a constituent institution of the University of North Carolina, or with the University of North Carolina Hospitals at Chapel Hill. The types of health-care practitioners to which the provisions of this Article may apply include, but are not limited to, medical doctors, dentists, nurses, residents, interns, medical technologists, nurses' aides, and orderlies. Subject to all requirements and limitations of this Article, the coverage to be provided, through insurance or self-insurance or combination thereof, may include provision for the payment of expenses of litigation, the payment of civil judgments in courts of competent jurisdiction, and the payment of settlement amounts, in actions, suits or claims to which this Article applies. (1975, 2nd Sess., c. 976; 1989, c. 141, s. 6.)

CASE NOTES

Extent of Coverage. — The University of North Carolina's (UNC) trust fund providing coverage against personal tort liability for individuals, whether an employee, agent or officer of UNC, does not require that the individual's conduct only be covered if he has a valid employment contract with UNC. University of N.C. v. Shoemate, 113 N.C. App. 205, 437 S.E.2d 892, cert. denied, 336 N.C. 615, 447 S.E.2d 413 (1994).

§ 116-220. Establishment and administration of self-insurance trust funds; rules and regulations; defense of actions against covered persons; application of § 143-300.6.

(a) In the event the Board elects to act as self-insurer of a program of liability insurance, it may establish one or more insurance trust accounts to be used only for the purposes authorized by this Article: Provided, however, said program of liability insurance shall not be subject to regulation by the Commissioner of Insurance. The Board is authorized to receive and accept any gift, donation, appropriation or transfer of funds made for the purposes of this section and to deposit such funds in the insurance trust accounts. All expenses incurred in collecting, receiving, and maintaining such funds and in otherwise administering the self-insured program of liability insurance shall be paid from such insurance trust accounts.

(b) Subject to all requirements and limitations of this Article, the Board is authorized to adopt rules and regulations for the establishment and administration of the self-insured program of liability insurance, including, but not limited to, rules and regulations concerning the eligibility for and terms and conditions of participation in the program, the assessment of charges against participants, the management of the insurance trust accounts, and the negotiation, settlement, litigation, and payment of claims.

(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program.

(d) Defense of all suits or actions against an individual health-care practitioner who is covered by a self-insured program of liability insurance established by the Board under the provisions of this Article may be provided by the Attorney General in accordance with the provisions of G.S. 143-300.3 of Article 31A of Chapter 143; provided, that in the event it should be determined pursuant to G.S. 143-300.4 that defense of such a claim should not be provided by the State, or if it should be determined pursuant to G.S. 143-300.5 and G.S. 147-17 that counsel other than the Attorney General should be employed, or if the individual health-care practitioner is not an employee of the State as defined in G.S. 143-300.2, then private legal counsel may be employed by the Liability Insurance Trust Fund Council and paid for from funds in the insurance trust accounts.

(e) For purposes of the requirements of G.S. 143-300.6, the coverage provided State employees by any self-insured program of liability insurance established by the Board pursuant to the provisions of this Article shall be deemed to be commercial liability insurance coverage within the meaning of G.S. 143-300.6(c).

(f) By rules or regulations adopted by the Board in accordance with G.S. 116-220(b) of this Article, the Board may provide that funds maintained in insurance trust accounts under such a self-insured program of liability insurance may be used to pay any expenses, including damages ordered to be paid, which may be incurred by the University of North Carolina, a constituent institution of the University of North Carolina, or the University of North Carolina Hospitals at Chapel Hill with respect to any tort claim, based on alleged negligent acts in the provision of health-care services, which may be prosecuted under the provisions of Article 31 of Chapter 143 of the General Statutes. (1975, 2nd Sess., c. 976; 1987, c. 263, s. 1; 1989, c. 141, s. 7; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2009-136, s. 4.)

Effect of Amendments. — Session Laws 2009-136, s. 4, effective June 19, 2009, deleted "the State Auditor" preceding "the State Insurance Commissioner" in subsection (c).

§ 116-220.1. Funding of self-insurance program.

(a) If the Board elects to establish a self-insurance trust fund, the initial contribution to the fund shall be determined by an independent actuary but shall be no less than three hundred thousand dollars ($300,000). Annual contributions to said fund shall be made in an amount to be determined each year by the Trust Fund Council upon the advice of an independent actuary and shall include amounts necessary to pay all costs of administration of the self-insurance program and claims adjustment including litigation in addition to amounts necessary to pay claims. Contributions shall be no less than one hundred fifty percent (150%) of the amounts actually paid each year on medical malpractice claims until such time as the Trust Fund Council, with the advice of an independent actuary and the approval of the Board of Governors, determines that an annual contribution in a lesser amount will not impair the adequacy of the fund to satisfy existing and potential health care malpractice claims for a period of one year.

(b) Claims certified to be paid from the fund shall be paid in the order of award or settlement. In the event that the fund created hereunder shall at any time have insufficient funds to assure that both existing and future claims will be paid, the Board is hereby authorized to borrow necessary amounts up to thirty million dollars ($30,000,000) per established self-insurance trust fund account to replenish the fund. The Board shall maintain funds in each self-insurance trust at no less than one hundred thousand dollars ($100,000) at all times.

(c) Funds borrowed by the Board to replenish the trust fund account may be secured by pledging noncapital assets of the members. Members shall mean those entities, agencies, departments or divisions of the University which directly contribute funds to the self-insurance trust. In no event shall individual health care providers be deemed members for the purposes of this section.

(d) Obligations issued under the provisions of this Article shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision but shall be payable solely from the revenues or assets of the members. Each obligation issued under this Article shall contain on the face thereof a statement to the effect that the University shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation. (1977, c. 523, s. 2; 1987, c. 263, s. 2.)

§ 116-220.2. Termination of fund.

Any fund created hereunder may be terminated by the Board of Governors upon their determination that other satisfactory and adequate arrangements have been made to assure that both existing and future health care malpractice claims or judgments against the participants in the self-insurance program will be paid and satisfied. Upon the termination of any fund pursuant to this section, the full amount remaining in such fund upon termination less any outstanding indebtedness shall promptly be repaid to the University and allocated among the participating entities according to their respective contributions as determined by the Board of Governors. (1977, c. 523, s. 2.)

§ 116-221. Sovereign immunity.

Nothing in this Article shall be deemed to waive the sovereign immunity of the State. (1975, 2nd Sess., c. 976.)

CASE NOTES

Eleventh Amendment Immunity. — Former law student's 42 U.S.C.S. § 1983 claims against a state university, alleging that the student's expulsion from the university's law school for academic misconduct violated the student's Fourteenth Amendment rights and 20 U.S.C.S. § 1232, were dismissed, as (1) the student failed to show that Congress had abrogated sovereign immunity in a manner applicable to the student's claims; as sovereign immunity remained intact, (2) neither § 1983, § 1232, nor 28 U.S.C.S. § 1343 constituted congressional abrogation of sovereign immunity pertinent to the student's circumstances, and (3) as the Fourteenth Amendment did not itself destroy sovereign immunity, the court granted the university's motion to dismiss pursuant to Fed. R. Civ. P. 12 (b)(1), based on the Eleventh Amendment, and the student's § 1983 claim, unjust enrichment claim, and negligence claim were dismissed. Pfouts v. N.C. Cent. Univ., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 4643 (M.D.N.C. Mar. 24, 2003).

Cited in Roberson v. Dale, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-222. Confidentiality of records.

Records pertaining to the liability insurance program, including all information, correspondence, investigations, or interviews, concerning or pertaining to claims or potential claims against participants in the self-insurance program or to the program or applications for participation in the program shall not be considered public records under General Statutes Chapter 132 and shall not be subject to discovery under the Rules of Civil Procedure, General Statutes Chapter 1A. (1975, 2nd Sess., c. 976; 1977, c. 523, s. 1.)

§ 116-223. Further action.

The Board of Governors of the University of North Carolina is hereby authorized to take all action necessary to effectuate the purposes and provisions of this Article. (1977, c. 523, s. 2.)

§ 116-224. Appropriation.

The funds described by this Article are appropriated and shall be used only as provided by this Article. (2006-203, s. 54.1.)

Editor's Note. — Session Laws 2006-203, s. 126, made this section effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

§§ 116-225 through 116-228: Reserved for future codification purposes.

Article 27.

Private Institution Towing Procedures.

§ 116-229. Post-towing procedures.

If a private college or university employs law-enforcement officers so that Article 7A, Chapter 20, would otherwise apply to the removal and disposal of motor vehicles, the governing body of that college or university may by rule or ordinance provide an alternative hearing procedure for the owner. For purposes of this section, the definitions in G.S. 20-219.9 apply.

(1) If the college or university operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the college or university operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,
d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
e. If the college or university chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the college or university may destroy it. (1983, c. 420, s. 6.)

Article 28.

North Carolina-Israel Visiting Scholar Program.

§ 116-230. North Carolina-Israel Visiting Scholar Program.

(a) There is created the North Carolina-Israel Visiting Scholar Program for the purpose of granting funds to members of the faculties of the constituent institutions of The University of North Carolina and institutions of higher education in Israel to assist in their travel and living expenses while participating in the program.

(b) The President of The University of North Carolina shall appoint a North Carolina Committee to work with a committee from Israel to prepare proper guidelines for the administration of the program and to establish criteria for the designation of participating scholars.

(c) Funds for the support of this program shall come from private sources, and grants shall be made for as many suitable recipients as can be found within budget limitations. (1985, c. 757, s. 81(c).)

Article 29.

The North Carolina School of Science and Mathematics.

§ 116-230.1. Policy.

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills and careers in science and mathematics among the people of the State. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(j).)

§ 116-231. Reestablishment of the North Carolina School of Science and Mathematics as a Constituent High School of The University of North Carolina.

The North Carolina School of Science and Mathematics is hereby reestablished, as a constituent high school of The University of North Carolina, and shall be governed by the Board of Governors as prescribed in this Chapter and a Board of Trustees as prescribed in this Article. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(k).)

§ 116-232. Purposes.

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development and global leadership through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; and to provide instruction, methods, and curricula designed to improve teaching and learning in North Carolina and the nation with an emphasis on distance education and programs that expand pathways for students into careers in science and mathematics. (1985, c. 757, s. 206(b); 2006-66, s. 9.11(l).)

§ 116-233. Board of Trustees; appointment; terms of office.

(a) Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of 27 members as follows:

(1) Thirteen members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.

(3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.

(4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.

(5) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) Two members appointed by the Governor.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State, the School, The University of North Carolina, or of any constituent institution of The University of North Carolina, shall be eligible to be appointed to the Board of Trustees except as specified under subdivision (3) of subsection (a) of this section. No spouse of a member of the General Assembly, or of an officer or employee of the school may be a member of the Board of Trustees. Any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, except as specified under subdivision (3) of subsection (a) of this section, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee of the School, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve staggered four-year terms expiring June 30 of odd numbered years.

(d1) Only an ex officio member shall be eligible to serve more than two successive terms.

(d2) Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term. Reapportionment of congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) Of the initial members appointed under G.S. 116-233(a)(5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(a)(6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b); 1991 (Reg. Sess., 1992), c. 879, ss. 1, 2; 1995, c. 490, s. 45; c. 509, s. 65; 2003-57, ss. 1, 2; 2006-66, s. 9.11(m); 2007-278, s. 4.)

§ 116-234. Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least three times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) Notwithstanding the provisions of G.S. 116-32, the Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66; 2006-66, s. 9.11(n).)

§ 116-235. Board of Trustees; additional powers and duties.

(a) In addition to the powers enumerated in Chapter 116, Article I, Part 3, the Board of Trustees shall have the powers and duties set out in this section.

(a1) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be

taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the armed services, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of qualified applicants offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The Chancellor of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Chancellor, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) through (h). Repealed by Session Laws 2006-66, s. 9.11(s), effective July 1, 2007.

(i) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. — The Board of Trustees shall adopt policies to require (i) the display of the United States and North Carolina flags in each classroom when available, (ii) the recitation of the Pledge of Allegiance on a daily basis, and (iii) the instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1; 2002-126, s. 9.12(c); 2005-318, s. 2; 2005-445, s. 8.1; 2006-66, ss. 9.11(o)-9.11(s); 2006-137, s. 5.)

Editor's Note. — Subsection (e)(8), rather than subsection (c)(8) of this section, was amended as directed by Session Laws 1993, c. 539, s. 897, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994. It has been set out in the form above at the direction of the Revisor of Statutes.

The references to G.S. 20-141(f1) and (g2) in subdivision (e)(3) of this section are to subsections existing prior to the 1973 amendment of G.S. 20-141.

Subdivision (b)(2), as amended by Session Laws 2005-318, s. 2, effective December 1, 2005, [to change the offense classification from class 3 to class 1]; is applicable to offenses committed on or after that date.

§§ 116-236 through 116-238: Repealed, by Session Laws 2006-66, ss. 9.11(t) through 9.11(v), effective July 1, 2007.

§ 116-238.1. (Repealed effective July 1, 2014) Full tuition grant for graduates who attend a State university.

(a) There is granted to each State resident who graduates from the North Carolina School of Science and Mathematics and who enrolls as a full-time student in a constituent institution of The University of North Carolina a sum to be determined by the General Assembly as a tuition grant. The tuition grant shall be for four consecutive academic years and shall cover the tuition cost at the constituent institution in which the student is enrolled. The tuition grant shall be distributed to the student as provided by this section. The grant provided by this section is only available to a student enrolled at the North Carolina School of Science and Mathematics for the 2008-2009 academic year or earlier.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from the appropriate constituent institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times it prescribes the grant to the constituent institution on behalf, and to the credit, of the student.

(c) In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority.

(d) In the event there are not sufficient funds to provide each eligible student with a full grant:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund.

(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of attendance at the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of attendance at the constituent institution for which the tuition grant is awarded, then the amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of attendance received by the student, including the tuition grant under this section, shall not exceed the cost of attendance for the constituent institution at which the student is enrolled. The cost of attendance, as used in this subsection, shall be determined by the State Education Assistance Authority for each constituent institution. (2003-284, s. 9.4(a); 2004-203, s. 47; 2005-276, s. 9.14(a); 2009-451, s. 9.6(a), (b).)

Section repealed effective July 1, 2014. — This section is repealed effective July 1, 2014, by Session Laws 2009-451, s. 9.6(b).

Editor's Note. — Session Laws 2003-284, s. 9.4(b), made this section applicable to students graduating in the 2003-2004 academic year and each subsequent academic year.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2004-124, ss. 9.6A(a)-(c), provides: "(a) It is the intent of the General Assembly that the Board of Governors of The University of North Carolina review, evaluate, and study G.S. 116-238.1, which provides a four-year tuition grant to any North Carolina resident who graduates from the North Carolina School of Science and Mathematics and enrolls as a full-time student in a constituent institution of The University of North Carolina.

"(b) The North Carolina School of Science and Mathematics shall collect data on the median family income of the students attending the school.

"(c) The President of the North Carolina School of Science and Mathematics and the Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee regarding the information collected in compliance with subsections (a) and (b) of this section and any findings and recommendations of the Board of Governors. The Joint Legislative Education Oversight Committee shall report to the 2005 General Assembly the information received from the President of the North Carolina School of Science and Mathematics and the Board of Governors and the findings and recommendations of the Board of Governors, along with the Committee's own findings and recommendations regarding the continuation of the tuition grant program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Subsection (f), as amended by Session Laws 2005-276, s. 9.14(a), effective July 1, 2005, is applicable to any eligible student who is enrolled full-time in The University of North Carolina after July 1, 2005.

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 9.6(a), effective July 1, 2009, added the last sentence of subsection (a).

§ 116-238.5: Repealed by Session Laws 2007-484, s. 30, effective August 30, 2007.

§ 116-239: Reserved for future codification purposes.

ARTICLE 30.

[Western] North Carolina Arboretum.

§ 116-240. Establishment of Arboretum.

The North Carolina Arboretum is established on land being provided by the United States Forest Service from property presently designated as the Bent Creek Experimental Forest.

The United States Forest Service has committed itself to continuing its work of the land provided to the Arboretum as many of its studies will be compatible with the work of the Arboretum. (1985 (Reg. Sess., 1986), c. 1014, s. 98; 1989, c. 139, s. 1.)

§ 116-241. Purpose and scope of Arboretum.

The Arboretum shall be prepared for viewing and maintaining the necessary plantings that will be added to the present vegetation of the site in order to make the Arboretum fully representative of Western North Carolina. Extensive clearing of underbrush and other debris needed to prepare the area for demonstrations, installation of fencing for security purposes, land modifications and improvement, and plant acquisitions shall be carried out to make the Arboretum both representative and accessible to the public. Roads and pathways shall be constructed as necessary throughout the Arboretum to enable visitors to ride and walk through the area in order to observe and study the various kinds of vegetation. An extensive program of identification of trees, shrubs, and other living material shall be ongoing at the Arboretum. Necessary visitor and educational buildings, greenhouses, and a small lecture hall, with restrooms and other associated requirements, shall be constructed on the property. Machine sheds and service buildings shall also be constructed on the property to house equipment and to provide working space for the personnel employed in developing and operating the Arboretum. (1985 (Reg. Sess., 1986), c. 1014, s. 98.)

§ 116-242. Administration of Arboretum; acceptance of gifts and grants.

The Arboretum shall be administered by The University of North Carolina through the Board of Directors established in G.S. 116-243. State funds for the administration of the Arboretum shall be appropriated to The University of North Carolina for the University of North Carolina at Asheville. The University of North Carolina may receive gifts and grants to be used for development or operation of the Arboretum. (1985 (Reg. Sess., 1986), c. 1014, s. 98.)

§ 116-243. Board of directors established; appointments.

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.
(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.
(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives,

initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(4) The President of The University of North Carolina or the President's designee to serve ex officio.

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio.

(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio.

(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs.

(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors. (1985 (Reg. Sess., 1986), c. 1014, s. 98; 1995, c. 490, s. 63; 2003-102, s. 1; 2004-203, s. 48.)

§ 116-244. Duties of board of directors.

The board of directors of the Arboretum has the following duties and responsibilities:

(1) Development of the policies and procedures concerning the use of the land and facilities being developed as part of the Western North Carolina Arboretum, Inc.;

(2) Approval of plans for any buildings to be constructed on the facility;

(3) Maintenance and upkeep of buildings and all properties;

(4) Approval of permanent appointments to the staff of the Arboretum;

(5) Recommendations to the General Administration of candidates for executive director of the Arboretum;

(6) Recommendations to the General Administration for necessary termination of the executive director or other personnel of the Arboretum;

(7) Ensurance of appropriate liaison between the Arboretum and the U. S. Forest Service, the Western North Carolina Arboretum, Inc., and other agencies and organizations of interest to and involved in the work at the Arboretum;

(8) Development of various policies and directives, including the duties of the executive director, to be prepared jointly by the members of the board of directors and the executive director;

(9) Approval of annual expenditures and budget requests to be submitted to the Board of Governors.

The board of directors shall meet at least twice a year, and more frequently on the call of the chairman or at the request of at least 10 members of the board. Meetings shall be held at the Arboretum, the University of North Carolina at Asheville, or Western Carolina University. (1985 (Reg. Sess., 1986), c. 1014, s. 98.)

§§ 116-245 through 116-249: Reserved for future codification purposes.

ARTICLE 31.

Piedmont Triad Research Institute and Graduate Engineering Program.

§ 116-250. Piedmont Triad Regional Institute; establishment; board of directors; purpose.

(a) There is established the Piedmont Triad Research Institute as a nonprofit corporation registered and regulated pursuant to Chapter 55A of the General Statutes.

(b) The Articles of Incorporation of the Institute shall constitute the board of directors of the Institute of individuals representing industrial and business interests in the Triad area, and of representatives of the following universities:

(1) North Carolina Agricultural and Technical State University;
(2) North Carolina State University at Raleigh;
(3) Wake Forest University; and
(4) Winston-Salem State University.

(c) The Institute is established to further education and research in engineering, particularly as engineering may be applied to medicine. (1991, c. 316, s. 1.)

Editor's Note. — Session Laws 1991, c. 316, s. 2 provides: "Nothing in this act obligates this General Assembly or future General Assembly [sic] to appropriate any funds to implement it or obligates the Board of Governors of The University of North Carolina to allocate any funds to implement it."

§ 116-251. Piedmont Triad Regional Institute's Director; funding administration duties.

The Director of the Piedmont Triad Research Institute shall report directly to the board of directors of the Institute. The Director shall administer the Institute's funds from three primary sources for the general operation of the Institute and the fourth for the operation of the Piedmont Triad Graduate Engineering Program established by G.S. 116-252. These sources of funds are as follows:

(1) Funds from external research funding agencies such as the National Science Foundation and the National Institutes of Health;
(2) Funds from industries in support of specific research projects;
(3) Funds from block grants from foundations and chambers of commerce; and
(4) Funds appropriated to the Institute from the State in support of the Piedmont Triad Graduate Engineering Program established by G.S. 116-252. (1991, c. 316, s. 1.)

§ 116-252. Piedmont Triad Graduate Engineering Program; establishment; purpose.

There is established the Piedmont Triad Graduate Engineering Program, to be housed in Winston-Salem in facilities provided by the Bowman Gray School of Medicine at Wake Forest University. The program shall support faculty and graduate students involved in engineering at the campuses of The University of North Carolina in order to allow their participation in engineering teaching and research in the Program, which shall provide much-needed university-level engineering education to the Piedmont Triad area.

The Program shall begin to be phased in effective for the academic year 1991-92. (1991, c. 316, s. 1.)

§ 116-253. Piedmont Triad Graduate Engineering Program; Board of Governors of The University of North Carolina; adoption of rules.

The Board of Governors, pursuant to its authority under G.S. 116-11, shall adopt rules, after consultation with the board of directors of the Piedmont Triad Research Institute, to implement this Article as it affects the ongoing roles of The University of North Carolina and its designated constituent institutions in the Piedmont Triad Graduate Engineering Program and in the education and research projects of the Institute. (1991, c. 316, s. 1.)

§§ 116-254 through 116-259: Reserved for future codification purposes.

Article 32.

Health Information.

§ 116-260. Information on meningococcal disease immunization.

(a) Each public or private educational institution that offers a postsecondary degree as defined in G.S. 116-15 and that has a residential campus shall provide vaccination information on meningococcal disease to each student. The vaccination information shall be contained on student health forms provided to each student by the educational institution and shall include space for the student to indicate whether or not the student has received the vaccination against meningococcal disease. The vaccination information about meningococcal disease shall include any recommendations issued by the national Centers for Disease Control and Prevention regarding the disease.

(b) The vaccination information obtained under this section that is in the possession of the educational institution is confidential and shall not be a public record under G.S. 132-1.

(c) This section shall not be construed to require the educational institution to provide the meningococcal vaccination to students.

(d) This section shall not apply if the national Centers for Disease Control and Prevention no longer recommends the meningococcal vaccine.

(e) This section does not create a private right of action. (2003-194, s. 1; 2004-203, s. 73.)

§§ 116-261 through 116-270: Reserved for future codification purposes.

Article 33.

Airport Authorities.

§ 116-271. General provisions.

(a) As provided by G.S. 116-11(12c), the Board of Governors may create one airport authority to support the missions of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be the county in which the airport may be established under subsection (c) of this section.

(b) To create an airport authority under this Article, the Board of Governors by resolution shall:

(1) Name the authority.
(2) Describe the input from affected local jurisdictions.
(3) Consider eligibility for State and federal funding.
(4) Find that the authority is essential to support the missions of The University of North Carolina.

(c) An airport established under this Article may only be established in Orange County. The sole purpose of the authority is to resite Horace Williams Airport and operate the resited airport.

(d) No member of the General Assembly may serve on an airport authority created under this Article. (2008-204, s. 4.2.)

Editor's Note. — Session Laws 2008-204, s. 7, made this Article effective August 8, 2008.

§ 116-272. Single or multi-institution authority membership.

(a) Where an airport authority is created to support the mission of the University of North Carolina at Chapel Hill, it shall consist of 15 members appointed as follows:

(1) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(2) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(3) Eight members shall be appointed to three-year terms by the Board of Governors upon recommendation of the Board of Trustees of the University of North Carolina at Chapel Hill, provided that four of the initial members so appointed shall serve terms of three years and four shall serve terms of two years;
(4) Three members shall be appointed by the board of commissioners of the county having territorial jurisdiction over the authority as provided by subsection (b) of this section; and
(5) Two members shall be appointed by the municipalities within that county as provided by subsection (c) of this section.

An airport authority may also be created to support the mission of one constituent institution and the University of North Carolina Health Care System. If the airport authority is created to support the mission of one constituent institution and the University of North Carolina Health Care System, then the eight members appointed by the Board of Governors shall include an equal number of representatives of the constituent institution and the University of North Carolina Health Care System. If it is impossible to appoint an equal number from each, then the Board of Governors shall determine a fair representation on the airport authority from each such entity.

(b) The board of commissioners of the county with territorial jurisdiction over the authority shall appoint three members. One of the initial members shall be appointed for a one-year term, one for a two-year term, and one for a three-year term. Successors shall be appointed for three-year terms.

(c) The municipality with the largest population within the county having territorial jurisdiction over the authority based on the most recent decennial federal census shall appoint one member for a two-year term. The municipalities with the second and third largest populations within that county based on the most recent decennial federal census shall alternately appoint one member for a two-year term, with the second largest municipality making the initial appointment.

(d) All vacancies on the authority shall be filled by the governing board authorized to make the initial appointment, and the appointment is for the remainder of the unexpired term, except that vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (2008-204, s. 4.2.)

§ 116-273. UNC Health Care System authority membership.

(a) Where an airport authority is created to support the mission of the University of North Carolina Health Care System, it shall consist of 15 members appointed as follows:

(1) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
(2) One member shall be appointed by the General Assembly for a three-year term upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
(3) Eight members shall be appointed to three-year terms by the Board of Directors, provided that four of the initial members so appointed shall serve terms of three years and three shall serve terms of two years;
(4) Three members shall be appointed by the board of commissioners of the county or counties having territorial jurisdiction over the authority as provided by subsection (b) of this section; and
(5) Two members shall be appointed by the municipalities within that county as provided by subsection (c) of this section.

(b) The board of commissioners of the county with territorial jurisdiction over the authority shall appoint three members. One of the initial members shall be appointed for a one-year term, one for a two-year term, and one for a three-year term. Successors shall be appointed for three-year terms.

(c) The municipality with the largest population within the county having territorial jurisdiction over the authority based on the most recent decennial federal census shall appoint one member for a two-year term. The municipalities with the second and third largest populations within that county based on the most recent decennial federal census shall alternately appoint one member for a two-year term, with the second largest municipality making the initial appointment.

(d) All vacancies on the authority shall be filled by the governing board authorized to make the initial appointment, and the appointment is for the remainder of the unexpired term, except vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. (2008-204, s. 4.2.)

§ 116-274. General powers.

(a) An authority created under this Article has all powers that a city or county has under Articles 1 through 7 of Chapter 63 of the General Statutes and, in regard to financing capital expenditures and operations, shall have such powers as are delegated to or conferred upon the constituent institutions or the University of North Carolina Health Care System. Notwithstanding other provisions of law, both regulations adopted by an authority under this Article and development regulations adopted by a county or municipality under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes shall be applicable to land owned by and the approaches to land owned by an authority created under this Article. In the event the regulations conflict, the more restrictive regulation applies.

(b) In addition to the powers granted by subsection (a) of this section, an authority created under this Article has the following powers:

(1) To sue and be sued in the name of the airport authority, and all pleadings served upon the airport authority shall be served on the chairperson or secretary of the airport authority.

(2) To expend funds appropriated to it from time to time for airport purposes and to expend funds received by the authority from fees, charges, rents, and dues arising out of the operation of the airport, the facilities, improvements, and concessions located thereat or operated thereon.

(3) To establish, construct, control, lease, maintain, improve, operate, and regulate an airport on lands acquired by it with buildings necessary to accommodate all types of business to operate an airport, runways, taxi ramps, parking ramps, and any equipment to operate an airport, to have complete authority for rules and regulations over all airport property for the control of all types of vehicular traffic, mobile or stationary, and pedestrian traffic with respect to areas or roadways not under the control of the Department of Transportation and any rules adopted by the airport authority for property exclusively under its control, and to have conjunctive authority to work with and cooperate with all duly constituted law enforcement agencies to enforce rules established by the State of North Carolina. The penalty for violation of rules established by the airport authority shall be a Class 3 misdemeanor and, upon conviction, shall be punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days. All rules and regulations so adopted by the airport authority shall be recorded by delivering true copies thereof certified by the chairperson and secretary of the authority to the Secretary of the Board of Governors and to the Secretary of State.

(4) The authority may acquire by purchase or gift any property for the purpose of establishing, extending, enlarging, or improving an airport. The authority does not possess the power of eminent domain over property held on July 1, 2008 by a tax-exempt Internal Revenue Code section 501(c)(3) organization organized for educational purposes. In all other cases, the authority possesses the power of eminent domain and may acquire property by eminent domain for the purpose of establishing, extending, enlarging, or improving an airport. In cases where the authority may exercise the power of eminent domain, the authority is declared to be a local public condemnor under the provisions of Chapter 40A of the General Statutes and in exercising the powers of eminent domain shall follow the procedures of Article 3 of Chapter 40A of the General Statutes. Title to the property and the right of immediate possession shall vest pursuant to subsection (a) of

G.S. 40A-42. If property acquired by condemnation contains a burial ground or graveyard, then it shall be lawful for the airport authority after 30 days' notice to the surviving spouse, or the next of kin of the deceased buried therein, or the person in control of the graves, if any are known, to remove the body interred therein and reinter the same in some cemetery in the same county. If no surviving spouse or next of kin or person in control can be found, then the airport authority can advertise for four consecutive weeks in a newspaper published in the county of the intended removal of the gravesite, and the removal shall be conducted under the supervision of the clerk of the superior court for that county or his or her representative, and the expense of such removal shall be borne by the airport authority. The airport authority may dispose of any real or personal property belonging to it according to the procedures described in Article 12 of Chapter 160A of the General Statutes.

(5) To lease to other entities for a term not to exceed 20 years and for purposes not inconsistent with airport purposes or usage, real or personal property or both, under the supervision of or administered by the airport authority.

(6) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of passenger and freight flights, scheduled or nonscheduled, and any other plane or flight activities not inconsistent with airport operations and to charge and collect reasonable fees, charges, and rents for the use of such property and services rendered in the operation thereof.

(7) To operate, own, control, regulate, lease, or grant to others the license to operate amusements or concessions for a term not exceeding 20 years.

(8) To enter into contracts to pledge as security the property of the airport authority.

(9) To pledge any lease agreement to which it is a party as security for any loan.

(10) To adopt and use a seal.

(11) To contract with the Federal Aviation Administration of the United States of America or with the State of North Carolina or with any of the agencies or representatives of either of said governmental bodies relating to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities, or both.

(12) To receive refunds of sales and use taxes under G.S. 105-164.14(c).

(13) To accept grants, loans, or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or from any county or other municipality, and to expend the proceeds for any purposes of the authority.

(14) To accept grants, loans, or contributions from nonprofit organizations and to expend the proceeds for any purposes of the authority.

(15) To adopt organizational bylaws that shall include, but not be limited to, provision for election, duties, and terms of a Chair and Secretary.

(16) To borrow money in accordance with Article V of Chapter 159 of the General Statutes, provided that all powers and duties conferred on the Local Government Commission shall for purposes of this section be held by the Board of Governors.

(c) The authority shall enjoy governmental immunity, however, the authority may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligence or intentional damage to persons or property or against absolute liability for damage to persons or property caused by an act or omission of the authority or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The members of the authority shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this provision.

Purchase of insurance pursuant to this provision waives the authority's governmental immunity to the extent of insurance coverage for any act or omission occurring in the exercise of a governmental function. By entering into an insurance contract with the authority, an insurer waives any defense based upon the governmental immunity of the authority.

If the authority has waived its governmental immunity pursuant to the foregoing provisions of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the authority or any of its officers, agents, or employees occurring in the exercise of a governmental function, may sue the authority for recovery of damages. To the extent of the coverage of insurance purchased pursuant to this section, governmental immunity may not be a defense to the action. Otherwise, however, the authority has all defenses available to private litigants in any action brought pursuant to these provisions without restriction, limitation, or other effect whether the defense arises from common law or by virtue of a statute. (2008-204, s. 4.2.)

§ 116-275. Cessation of operation.

In the event of cessation of the operation of an airport established under this Article, or the abandonment of any of the property acquired hereunder for airport purposes, the title to such real or personal property or rights under any existing lease shall vest in The University of North Carolina, and upon the sale of any property after cessation of operations, the proceeds therefrom shall first be distributed pro rata to the constituent university member or to the University of North Carolina Health Care System to reimburse their or their affiliated foundations' investments in the authority and thereafter shall vest in the University. (2008-204, s. 4.2.)

Chapter 116A.

Escheats and Abandoned Property.

§§ 116A-1 through 116A-11: Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 1.

Cross References. — For present provisions covering the subject matter of the repealed Chapter, see G.S. 116B-1 through 116B-80.

Chapter 116B.

Escheats and Abandoned Property.

Article 1.

Escheats.

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116B-1. Escheats to Escheat Fund.
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116B-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.
116B-4. Claim for escheated property.
116B-5. Escheat Fund.
116B-6. Administration of Escheat Fund; Escheat Account.
116B-7. Distribution of fund.
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Abandoned Property.

116B-10 through 116B-26. [Repealed.]

Article 3.

Administration of Abandoned Property.

116B-27. [Recodified.]
116B-28 through 116B-35. [Repealed.]
116B-36, 116B-37. [Recodified.]
116B-38 through 116B-46. [Repealed.]
116B-47. [Recodified.]
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North Carolina Unclaimed Property Act.

116B-51. Short title.
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Sec.
116B-55. Contents of safe deposit box or other safekeeping depository.
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116B-64. Income or gain accruing after payment or delivery.
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116B-68. Action to establish claim.
116B-69. Election to take payment or delivery.
116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.
116B-71. Periods of limitation.
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116B-76. Interstate agreements and cooperation; joint and reciprocal actions with other states.
116B-77. Interest and penalties; waiver.
116B-78. Agreement to locate property.
116B-79. Transitional provisions.
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ARTICLE 1.

Escheats.

§ 116B-1. Escheats to Escheat Fund.

All real estate which has accrued to the State since June 30, 1971, or shall hereafter accrue from escheats, shall be vested in the Escheat Fund. Title to any such real property which has escheated to the Escheat Fund shall be conveyed by deed in the manner now provided by G.S. 146-74 through G.S. 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the State Treasurer is a party, and wherein said court enters a judgment of escheat for any real property, then, upon petition of the State Treasurer in said action, said court shall have the authority to appoint the State Treasurer or his designated agent as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the Escheat Fund. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P.R.; R.C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C.S., s. 5784; 1947, c. 494; 1961, c. 257; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at G.S. 76-40.

Legal Periodicals. — For brief discussion of earlier provisions relating to escheats, see 25 N.C.L. Rev. 421 (1947).

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

CASE NOTES

When Real Property Escheats. — Real property escheats only when the owner dies intestate or dies testate without disposing of the same by will and without leaving surviving any heir, kindred or spouse to inherit under the laws of this State. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968), decided under earlier statute.

Right Conferred by Constitution and Extended by Statute. — See Board of Educ. v. Johnston, 224 N.C. 86, 29 S.E.2d 126 (1944), decided under earlier statute.

Land held by incorporated town held to escheat upon repeal of town charter under the facts of the case. University of N.C. v. City of High Point, 203 N.C. 558, 166 S.E. 511 (1932), decided under earlier statute.

OPINIONS OF ATTORNEY GENERAL

Former Chapter 116A Was Applicable to State Chartered Credit Unions. — See opinion of Attorney General to Mr. W.L. Cole, Administrator, Office of Credit Unions, 45 N.C.A.G. 223 (1976).

Insurance Statute Violations. — The escheats law does not apply to monetary payments collected by the Commissioner of Insurance from regulated persons and businesses for failure to comply with insurance statutes. See opinion of Attorney General to Mr. Peter Kolbe, General Counsel, North Carolina Department of Insurance, 2000 N.C. AG LEXIS 31 (2/9/2000).

§ 116B-2. Unclaimed real and personal property escheats to the Escheat Fund.

Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, as defined in G.S. 29-2(3), to inherit said property under the laws of this State, such real and personal property shall escheat. The State Treasurer shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. If an administrator or executor has been appointed, he shall make a determination that there are no known heirs or unknown claimants and shall inform the State Treasurer of that determination. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated, and the real property may be sold according to the provisions of G.S. 116B-1. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed, the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the Escheat Fund where said funds, together with all other escheated funds, shall be held without liability for profit or interest, subject to any just claims therefor. (1957, c. 1105, s. 1; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

CASE NOTES

There is a distinction between derelict property and escheated property. An escheat occurs when the property owner dies intestate and without relatives descended from a common parent or grandparent. North Carolina State Treas. v. City of Asheville, 61 N.C. App. 140, 300 S.E.2d 283 (1983).

Unrefunded ticket proceeds is neither abandoned nor derelict property. By purchasing a ticket to a concert, the ticket holder enters into a contract with the auditorium and the performer. If the contract is not performed, he or she may rescind the agreement and demand a refund, but is not compelled to do so. Nor must the auditorium operator or performer refund the purchase price absent a demand. If that were the case, the ticket holder would be unjustly enriched in retaining both money and memento. The auditorium is not a trustee of the unrefunded proceeds of the ticket sale; the auditorium is simply a party to an unperformed contract. North Carolina State Treas. v. City of Asheville, 61 N.C. App. 140, 300 S.E.2d 283 (1983).

§ 116B-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.

All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, heirs, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid or delivered by such administrator or executor to the State Treasurer as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the State Treasurer is authorized to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the State Treasurer shall hold the same without liability for profit or interest, subject to any just claims therefor. The provisions of this section and G.S. 116B-2 shall apply to the estate of a person missing for 30 days or more and the State Treasurer may bring an action to have a receiver appointed in such case under the provisions of Chapter 28C, Estates of Missing Persons. (1957, c. 1105, ss. 2, 21/2; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 1.)

§ 116B-4. Claim for escheated property.

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of Chapter 28A of the General Statutes. The provisions of G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this section. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 1.)

§ 116B-5. Escheat Fund.

All property escheated or abandoned under the provisions of this Chapter and all property escheated or abandoned since June 30, 1971, under the provisions of former Chapter 116A, as amended, shall be paid into a fund to be administered by the Treasurer, which fund shall be designated the Escheat Fund. No escheated or abandoned property heretofore paid or delivered to the University of North Carolina pursuant to any constitutional provision or statute of this State shall be subject to the provisions of this Chapter. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 3(b).)

Editor's Note. — Session Laws 1999-460, s. 3(b), effective January 1, 2000, provides that 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Session Laws 1999-460, s. 13 contains a severability clause.

§ 116B-6. Administration of Escheat Fund; Escheat Account.

(a) Escheat Account. — All funds received by the Treasurer as escheated or abandoned property and which were transferred prior to January 1, 1980, to the trust fund created under G.S. 116-209 shall remain in that trust fund and shall be placed in a special fund, designated the "Escheat Account."

(b) Investment and Transfer of Assets; Income. — The Treasurer is the trustee of the Escheat Account and has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209.

(c) Security Interest in Escheat Account. — The State Education Assistance Authority, in addition to other powers vested under G.S. 116-201 to G.S. 116-209.23, inclusive, is authorized to pledge and vest a security interest in all or any part of the Escheat Account, by resolution adopted or trust agreement approved by it, as security for or insurance respecting the payment of bonds or other obligations, as defined in G.S. 116-201, including principal, interest and redemption premium, if any; provided, that such pledge and security interest in the Escheat Account shall, in the determination of the Authority, constitute a use of the Escheat Fund to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The Authority may submit to the Treasurer, from time to time as it deems necessary, requisitions for transfers of money in the Escheat Account to pay such bonds and other obligations to the extent necessary under such pledge of, or security interest in, the Escheat Account, or any part thereof, and the Treasurer is authorized and directed to pay such money so requisitioned to the Authority for such purposes.

(d) Limitation on Amount of Obligations Secured. — The principal amount of bonds and other obligations insured or secured by the Escheat Account shall not exceed 10 times the amount held for the credit of the Escheat Account, as certified from time to time by the Treasurer, and, in no event, shall exceed three hundred fifty million dollars ($350,000,000). If the amount held for the credit of the Escheat Account, as certified by the Treasurer, shall be ten percent (10%) or less of the principal amount of the bonds and other obligations so insured or secured, the Authority shall not issue any additional bonds or cause additional obligations to be insured or secured by the Escheat Account until such time as the amount held for the credit of the Escheat Account exceeds ten percent (10%) of the principal amount of the bonds and other obligations secured or insured by the Escheat Account.

(e) Use of Excess Funds. — If the amount held for the credit of the Escheat Account at any time shall exceed the sum of thirty-five million dollars ($35,000,000), such excess may be used by the State Education Assistance Authority, with the written approval of the Treasurer, for the purpose of either (i) making student loans or (ii) refunding outstanding bonds or other obligations issued by the Authority and secured by a pledge of, or a security interest in, the Escheat Account. Any excess so used shall be repaid by the Authority to the Escheat Account in the manner agreed between the Authority and the Treasurer.

(f) Refund Reserve. — The Treasurer shall retain in the Escheat Fund, as a permanent refund reserve, either the sum of five million dollars ($5,000,000) or a sum equal to the total value of escheated or abandoned property received in the preceding fiscal year, whichever is greater, for the purpose of payment of refunds of escheated or abandoned property to persons entitled thereto.

(g) Additional Funds for Refunds. — If at any time the amount of the refund reserve shall be insufficient to make refunds required to be made, the Treasurer, in addition, may use all current receipts derived from escheated or abandoned property, exclusive of earnings and profits on investments of the Escheat Fund and the Escheat Account, for the purpose of making such refunds; and if all such funds shall be inadequate for such refunds, the Treasurer may apply to the Council of State, pursuant to the Executive Budget Act, to the limit of funds available from the Contingency and Emergency Fund, for a loan, without interest, to supply any deficiencies, in whole or in part. No receipts derived from escheated or abandoned property, other than earnings or profits on investments, shall be paid to the Authority until: (i) all valid claims for refund have been paid; (ii) the reserve for refund shall equal five million dollars ($5,000,000); and (iii) the amount loaned from the Contingency and Emergency Fund shall have been repaid by the Escheat Fund.

(h) Expenditures. — The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes.

(i) Records. — Before making a deposit to the Escheat Fund, or retaining or destroying property, the Treasurer shall record the name and address of the holder, the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property, the name and last known address of each insured person or annuitant, the amount or description of the property, and, with respect to each policy or contract listed in the report of an insurer, its number and the name of the corporation. The records shall be available for public inspection at all reasonable business hours. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, ss. 3(b), 4(a), (b).)

Editor's Note. — Session Laws 1999-460, s. 3(b), provides that 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Session Laws 1999-460, s. 13, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

Expenditures from Escheat Fund. — Pursuant to subsection (h) of this section, the Treasurer may expend funds from the Escheat Fund to publish the name of individuals who may have claims against the Fund. See opinion of Attorney General to Mr. Joseph R. Stewart, Chief Deputy State Treasurer, 2003 N.C.A.G. 5 (8/15/03).

§ 116B-7. Distribution of fund.

(a) The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 15 to the State Education Assistance Authority for grants and loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. Such grants and loans shall be made upon terms, consistent with the provisions of this Chapter, pursuant to which the State Education Assistance Authority makes grants and loans to other students under G.S. 116-201 to 116-209.23, Article 23 of Chapter 116 of the General Statutes, policies of the Board of Governors of The University of North Carolina regarding need-based grants for students of The University of North Carolina, and policies of the State Board of Community Colleges regarding need-based grants for students of the community colleges.

(b) An amount specified in the Current Operations Appropriations Act shall be transferred annually from the Escheat Fund to the Department of Administration to partially fund the program of Scholarships for Children of War Veterans established by Article 4 of Chapter 165 of the General Statutes. Those funds may be used only for residents of this State who (i) are worthy and needy as determined by the Department of Administration, and (ii) are enrolled in public institutions of higher education of this State. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 3(b); 2002-126, s. 9.19(a); 2003-284, s. 18.5(b).)

Editor's Note. — Session Laws 1999-460, s. 3(b), effective January 1, 2000, provides that 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Session Laws 1999-460, s. 13, contains a severability clause.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

Cited in North Carolina State Treas. v. City of Asheville, 61 N.C. App. 140, 300 S.E.2d 283 (1983); Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-8. Employment of persons with specialized skills or knowledge.

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as the Treasurer deems necessary or appropriate for the administration of this Chapter, including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to twelve percent (12%) of the final assessment. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, ss. 3(b), 5.)

Editor's Note. — Session Laws 1999-460, s. 3(b), provides that 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Session Laws 1999-460, s. 13, contains a severability clause.

§ 116B-9: Reserved for future codification purposes.

ARTICLE 2.

Abandoned Property.

§§ 116B-10 through 116B-26: Repealed by Session Laws 1999-460, s. 2, effective January 1, 2000.

Editor's Note. — Section 116B-24 through 116B-26, repealed by Session Laws 1999-460, s. 2, had been reserved for future codification purposes.

ARTICLE 3.

Administration of Abandoned Property.

§ 116B-27: Recodified as G.S. 116B-5 by Session Laws 1999-460, s. 3(b), effective January 1, 2000.

§§ 116B-28 through 116B-35: Repealed by Session Laws 1999-460, s. 3(a), effective January 1, 2000.

Editor's Note. — Sections 116B-31.1 through 116B-31.4, repealed by Session Laws 1999-460, s. 3(a), had been reserved for future codification purposes.

§ 116B-36: Recodified as G.S. 116B-6 by Session Laws 1999-460, s. 3(b), effective January 1, 2000.

§ 116B-37: Recodified as G.S. 116B-7 by Session Laws 1999-460, s. 3(b), effective January 1, 2000.

§§ 116B-38 through 116B-46: Repealed by Session Laws 1999-460, s. 3(a), effective January 1, 2000.

§ 116B-47: Recodified as G.S. 116B-8 by Session Laws 1999-460, s. 3(b), effective January 1, 2000.

§§ 116B-48, 116B-49: Repealed by Session Laws 1999-460, s. 3(a), effective January 1, 2000.

§ 116B-50: Reserved for future codification purposes.

ARTICLE 4.

North Carolina Unclaimed Property Act.

§ 116B-51. Short title.

This Article may be cited as the "North Carolina Unclaimed Property Act." (1999-460, s. 6.)

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at G.S. 76-40.

Editor's Note. — Session Laws 1999-460, s. 13, contains a severability clause.

OPINIONS OF ATTORNEY GENERAL

Insurance Statute Violations. — The Unclaimed Property Act may, depending on the circumstances, apply to monetary payments collected by the Commissioner of Insurance from regulated persons and businesses for failure to comply with insurance statutes. See opinion of Attorney General to Mr. Peter Kolbe, General Counsel, North Carolina Department of Insurance, 2000 N.C. AG LEXIS 31 (2/9/2000).

§ 116B-52. Definitions.

In this Chapter:

(1) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint

venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) "Holder" means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) "Mineral" means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) "Owner" means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Property" means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;
d. A bond, debenture, note, or other evidence of indebtedness;
e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;
f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Treasurer" means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. (1999-460, s. 6.)

CASE NOTES

***Editor's Note.** — One of the cases below was decided under former G.S. 116B-10 and prior to the enactment of this article.*

Layaway Funds Are Subject to This Chapter. — As long as a customer may get a refund, merely possession of the funds, not ownership, has been ceded. The customer retains an equitable interest in the money. The retention of a legal or an equitable interest in the funds makes the customer the statutory owner of the layaway payments. As a holder, not an owner, the layaway funds within the store's control are subject to the escheat statute. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-53. Presumptions of abandonment.

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance.

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property.

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance.

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, three years after the earlier of:

a. The date of a cash dividend or other distribution unclaimed by the apparent owner.

b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent owner.

c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(5) Debt of a business association, including debt evidenced by a matured or called bearer bond or an original issue discount bond, three years after the date of an interest or principal payment unclaimed by the apparent owner.

(5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from a demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policyholder, member, bondholder, or other security holder, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property.

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued.

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card.

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable.

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date.

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable.

(13) Wages or other compensation for personal services, two years after the compensation becomes payable.

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable.

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty.

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution, except as otherwise provided by the Uniform Commercial Code. (1999-460, s. 6; 2001-226, s. 1; 2005-132, s. 1.)

DRAFTER'S COMMENT

The examples in subsection (b) of indications of interest in property are not exclusive. For example, notification of a change of the apparent owner's address is an indication of interest.

CASE NOTES

Editor's Note. — *One of the cases below was decided under former G.S. 116B-21 and prior to the enactment of this article.*

Property Subject to Escheat. — Property which is held in the ordinary course of business is deemed abandoned and subject to escheat when it is: 1) any item of property, not otherwise specifically covered under the escheat statute, 2) in the possession of one not the owner, and 3) held for five years after the sum becomes payable or distributable. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

Demand for Return of Item Not Required. — This chapter does not require the customer to make a demand for the return of the item before it is deemed to be abandoned property. In fact, the statute clearly indicates that property is considered abandoned after five years have passed since the last assertion of ownership. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were rendered under former law.*

All Unclaimed Property Held by Various Types of Hospitals Escheats Pursuant to Statute. — See opinion of Attorney General to Mr. Edward E. Hollowell, 42 N.C.A.G. 14 (1972), decided under former Chapter 116A.

Under Facts Stated in Opinion, Statute Was Applicable to One-Product Cooperative Marketing Association. — See opinion of Attorney General to Honorable Edwin Gill, State Treasurer, 42 N.C.A.G. 12 (1972), decided under former Chapter 116A.

§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term "reservation deposit" means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term "reservation deposit" does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date; or

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned property. For purposes of this section, the term "credit balances" means items such as overpayments or underpayments on the sale of goods or services.

(f) A lottery prize that remains unclaimed after the period set by the North Carolina State Lottery Commission for claiming those prizes shall not constitute abandoned property. (1999-460, s. 6; 2005-276, s. 31.1(w1); 2005-344, s. 7.)

Editor's Note. — Session Laws 1999-460, s. 15, provides that subsection (d) of this section, as enacted by Session Laws 1999-460, s. 6, is intended to clarify and not change existing law.

Session Laws 2005-344, which enacted the North Carolina State Lottery, G.S. 18C-101 et seq., in s. 14, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act."

§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65. (1999-460, s. 6.)

Legal Periodicals. — See 15 N.C.L. Rev. 350 (1937).

For comment on the 1949 amendment to the former escheat statute, see 27 N.C.L. Rev. 427 (1949).

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

CASE NOTES

Editor's Note. *— One of the cases below was decided under former statutory law and prior to the enactment of this article.*

Escheat Officer Not Liable. — Funds representing amounts apportioned to claimants of an insolvent bank who failed to prove their claims, which are turned over to the Secretary of State (now the State Treasurer) as escheat officer, are not assets of the liquidated bank, but are to be held subject solely to the rights of those who failed to prove their claims, and a depositor who proved his claim and received dividends thereon as a common claim may not hold the escheat officer liable for the balance unpaid on his claim upon his contention that the claim should have been paid in full as a preferred claim. Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937), decided under earlier statute.

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

  a. The last known address of the person entitled to the property is in this State; or

  b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this

State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State; or

(6) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:
  a. No address of the person is known to the insurance company; or
  b. The records of the insurance company do not reflect the identity of the person. (1999-460, s. 6.)

§ 116B-57. Dormancy charge; other lawful charges.

(a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

(b) This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract. (1999-460, s. 6.)

§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder. In asserting these affirmative defenses, a holder who is also the issuer may satisfy the holder's burden of proof by showing a written acknowledgement by the payee of a check, draft, or similar instrument that no obligation is owed the payee. (1999-460, s. 6.)

§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 4-6; 1993, c. 539, s. 898; c. 541, s. 5; 1994, Ex. Sess., c. 24, s. 14(c); 1999-460, s. 6.)

§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting 50 or more property owner records shall file the report in an electronic format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically. Holders reporting electronically may file an electronically signed affidavit in order to comply with subsection (f) of this section.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report.

A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 7, 8; 1983, c. 204, s. 3; 1985, c. 215, ss. 2, 3; 1987, c. 163, ss. 1-3; 1993, c. 541, s. 6; 1999-460, s. 6; 2009-177, s. 1.)

Effect of Amendments. — Session Laws 2009-177, s. 1, effective October 1, 2009, added the last three sentences of subsection (a).

§ 116B-61. Payment or delivery of abandoned property.

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14; 1987, c. 163, s. 6; 1993, c. 541, s. 7; 1999-460, s. 6.)

CASE NOTES

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered annually in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain all of the following:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property as of June 30 of that year.

(2) The names and addresses of the holders of the abandoned property.

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

The Treasurer shall send the list to the Administrative Office of the Courts as soon as possible after June 30 of each year but no later than July 31, and the Administrative Office of the Courts shall distribute the list to each clerk of superior court as soon as possible after receiving it but no later than August 31.

(b) At the time the lists are distributed to the clerks of superior court, but no later than August 31 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall make the lists available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of unclaimed property held by a clerk of superior court or any other office of State or local government may be confidential but shall be disclosed to the Treasurer in accordance with the reporting of escheated and abandoned property. The supporting data and lists of apparent owners of escheated and abandoned property held by the Treasurer may be confidential until six months after the list to the clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 9-13; 1983, c. 204, ss. 4-7; 1985, c. 215, s. 4; 1987, c. 163, ss. 4, 5; 1999-460, s. 6; 2009-312, s. 1.)

Effect of Amendments. — Session Laws 2009-312, s. 1, effective October 1, 2009, and applicable to agreements entered into on or after that date, in subsection (a), in the introductory language, inserted "annually in an electronic format to the Administrative Office of the Courts to be distributed" and deleted "prior to June 30 of each year" following "each county" in the first sentence, and added "all of the following" at the end of the second sentence; in subdivision (a)(1), added "as of June 30 of that year" at the end, and made related changes; and added the last paragraph; in subsection (b), inserted "but no later than August 31 of each year"; in subsection (d), substituted "make the lists" for "retain the lists on permanent file in their offices and shall make them"; and rewrote subsection (f).

§ 116B-63. Custody by State; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer. (1979, 2nd Sess., c. 1311, s. 1; 1989, c. 114, s. 3; 1999-460, s. 6.)

CASE NOTES

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 6.)

CASE NOTES

Retention of Interest or Income on Unclaimed Property Not a Compensable Taking. — Retention of the interest or income on unclaimed property by the State of North Carolina and its treasurer pursuant to G.S. 116B-64 of the North Carolina Unclaimed Property Act does not constitute a taking without just compensation in violation of N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution. Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008), review denied, appeal dismissed, 362 N.C. 474, 666 S.E.2d 487 (2008).

Property owners whose dividends and funds had been held by the State of North Carolina and its treasurer under G.S. 116B-64 of the North Carolina Unclaimed Property Act could not claim a compensable taking of their property pursuant to N.C. Const., Art. I, § 19 and the Fifth and Fourteenth Amendments of the United States Constitution because the owners' action in failing to make any use of the property at issue, rather than the action of the State, caused the lapse of the property right and the State did not undertake any overt action to take private property from the owners. Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008), review denied, appeal dismissed, 362 N.C. 474, 666 S.E.2d 487 (2008).

§ 116B-65. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 6.)

CASE NOTES

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-66. Claim of another state to recover property.

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state; or

(4) Repealed by Session Laws 2000, c. 140, s. 27, effective July 21, 2000.

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(a)(6), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property. (1999-460, s. 6; 2000-140, s. 27.)

§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the

Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63. (1979, 2nd Sess., c. 1311, s. 1; 1987, c. 163, s. 8; c. 827, s. 18; 1999-460, s. 6.)

CASE NOTES

Cited in Rowlette v. State, 188 N.C. App. 712, 656 S.E.2d 619, 2008 N.C. App. LEXIS 284 (2008).

§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant. (1999-460, s. 6.)

§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14; 1987, c. 163, ss. 6, 7; 1993, c. 541, s. 7; 1999-460, s. 6.)

§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 6.)

§ 116B-71. Periods of limitation.

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than five years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent. (1979, 2nd Sess., c. 1311, s. 1; 1993, c. 541, s. 8; 1999-460, s. 6.)

§ 116B-72. Requests for reports and examination of records.

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 671, s. 18; 1999-460, s. 6.)

§ 116B-73. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report. (1999-460, s. 6.)

§ 116B-74. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The

Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review. (1999-460, s. 6.)

§ 116B-75. Enforcement.

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt. (1999-460, s. 6.)

§ 116B-76. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 6.)

§ 116B-77. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section. (1979, 2nd Sess., c. 1311, s. 1; 1989, c. 114, s. 4; 1999-460, s. 6.)

§ 116B-78. Agreement to locate property.

(a) Repealed by Session Laws 2009-312, s. 2, effective October 1, 2009, and applicable to agreements entered into on or after that date.

(a1) Agreements Covered. — An agreement by an owner is covered by this section if its primary purpose is to locate, deliver, recover, or assist in the recovery of property that is distributable to the owner or presumed abandoned.

(a2) Void Agreements. — An agreement covered by this section is void and unenforceable if it was entered into during the period commencing on the date the property was distributable to the owner and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a claim or a clerk's denial of a petition.

(b) Criteria for Agreements. — An agreement covered by this section is enforceable only if it meets all of the following criteria:

(1) Is in writing and clearly sets forth the nature of the property and the services to be rendered.
(2) Is signed by the owner, with signature notarized.
(3) Describes the property, which includes the type of property, the property ID held by the State Treasurer, and the name of the holder.
(4) States that there may be other claims to the property that may reduce the share of the owner.
(5) States the value of the property, to the extent known, before and after the fee or other compensation has been deducted.
(6) States clearly the fees and costs for services. Total fees and costs shall be limited as follows:
    a. For an agreement covered by this section other than one covered by G.S. 28A-22-11, total fees and costs shall not exceed one thousand

dollars ($1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.

b. For an agreement subject to G.S. 28A-22-11 by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate, or surplus funds in a special proceeding, total fees and costs shall not exceed twenty percent (20%) of the value of the property recovered.

(7) Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program.

(c) Mineral Proceeds. — If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) Means of Payment. — Any person who enters into an agreement covered by this section with an owner shall be allowed to receive cash property, but not tangible property or securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. Tangible property shall be delivered to the owner by the Treasurer, and securities will be reregistered into the owner's name.

(e) Other Remedies. — This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (b) of this section.

(f) Registration. — Any person who enters into an agreement covered by this section with an owner shall register each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars ($100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

(g) Unfair Trade Practice. — In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1. (1979, 2nd Sess., c. 1311, s. 1; 1989, c. 114, s. 6; 1999-460, s. 6; 2009-312, s. 2.)

Effect of Amendments. — Session Laws 2009-312, s. 2, effective October 1, 2009, and applicable to agreements entered into on or after that date, rewrote the section.

§ 116B-79. Transitional provisions.

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-77(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section. (1999-460, s. 6.)

§ 116B-80. Rules.

The Treasurer may adopt rules necessary to carry out this Chapter. (1979, 2nd Sess., c. 1311, s. 1; 1987, c. 827, s. 19; 1989, c. 114, s. 5; 1999-460, s. 6.)

Chapter 116C.

Continuum of Education Programs.

Sec.
116C-1. Education Cabinet created.
116C-2. State Education Commission.
116C-3. Strategic design for a continuum of education programs.
116C-4. First in America Innovative Education Initiatives Act.

§ 116C-1. Education Cabinet created.

(a) The Education Cabinet is created. The Education Cabinet shall be located administratively within, and shall exercise its powers within existing resources of, the Office of the Governor. However, the Education Cabinet shall exercise its statutory powers independently of the Office of the Governor.

(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members.

(c) The Education Cabinet shall be a nonvoting body that:

(1) Works to resolve issues between existing providers of education.
(2) Sets the agenda for the State Education Commission.
(3) Develops a strategic design for a continuum of education programs, in accordance with G.S. 116C-3.
(4) Studies other issues referred to it by the Governor or the General Assembly.

(d) The Office of the Governor, in coordination with the staffs of The University of North Carolina, the North Carolina Community College System, and the Department of Public Instruction, shall provide staff to the Education Cabinet. (1993, c. 393, s. 1; 1995, c. 324, s. 15.12(b); 2001-123, s. 1; 2005-276, s. 7.38(a).)

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, s. 9.3, provides for the development and implementation of a Joint Initiative for Teacher Education and Recruitment. See note at G.S. 115C-295.

Small Specialty High Schools Pilot Program. — Session Laws 2005-276, ss. 7.52(a) and (b), provide: "(a) Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006."

Session Laws 2007-323, s. 7.21, provides: "The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee no later than January 15 of each year on the results of its evaluation of the small, restructured high school program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program."

Editor's Note. — Session Laws 2005-276, s. 7.38(b), provides: "The Education Cabinet shall study:

"(1) The extent to which school nurses, school social workers, and other instructional support personnel collaborate with each other and with local health, mental health, and social services providers to meet the needs of at-risk children and their families and to support the educational achievement of at-risk children; and

"(2) The need for additional training for school nurses, school social workers, and other instructional support personnel on multidisciplinary assessments and on referral and care coordination for at-risk students and their families.

"The Education Cabinet shall report the results of its study and its recommendations to the Joint Legislative Education Oversight Committee prior to April 15, 2006."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 7.28(e), provides: "(e) As recommended in the E-Learning Report, February 2006, the Education Cabinet shall develop a plan to:

"(1) Coordinate E-learning activities across the public and private universities and colleges, the community colleges, and the public schools;

"(2) Establish a clear purpose and goals for the NCVirtual based on stakeholder needs and requirements;

"(3) Develop a strategic plan with measurable goals with reports provided to the Education Cabinet;

"(4) Develop, track, and report regularly to the Education Cabinet on appropriate accountability measures for those goals;

"(5) Develop and manage an E-learning portal for the NCVirtual; and

"(6) Use State-invested funds for E-learning to eliminate duplication of service."

Session Laws 2007-323, s. 7.28(g), provides: "(g) The Education Cabinet shall report on its progress towards developing the plan on January 1, 2008, and annually thereafter to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, the State Information Technology Officer, and the Fiscal Research Division."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 116C-2. State Education Commission.

The State Education Commission shall consist of the Board of Governors of The University of North Carolina, the State Community College Board, and the State Board of Education. The Governor shall call the meetings of the State Education Commission.

The Commission shall be a forum for airing proposals and engaging in board-to-board dialogue about issues the Education Cabinet is addressing. The agenda for Commission meetings shall be set by the Education Cabinet. (1993, c. 393, s. 1.)

§ 116C-3. Strategic design for a continuum of education programs.

The Education Cabinet shall develop a strategic design for a continuum of education programs. A continuum of education programs is the complement of programs delivered by the State to learners at all levels.

The new design shall take into account issues raised by the Government Performance Audit Committee of the Legislative Research Commission.

The design process shall:

(1) Include vigorous examination of all programs as if they were being created for the first time.

(2) Compare the existing structures, funding levels, and responsibilities of each system to the new design.

(3) Focus on issues concerning coursework articulation and plan for how to improve coursework articulation among existing providers of education.

The Education Cabinet shall report to the Joint Legislative Education Oversight Committee on the strategic design it develops prior to January 1, 1995. (1993, c. 393, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 12.1.)

Small Specialty High Schools Pilot Program. — Session Laws 2005-276, ss. 7.52(a) and (b), provide: "(a) Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"(b) The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006."

Small Restructured High Schools. — Session Laws 2007-323, s. 7.21, provides: "The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee no later than January 15 of each year on the results of its evaluation of the small, restructured high school program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program."

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 116C-4. First in America Innovative Education Initiatives Act.

(a) The General Assembly strongly endorses the Governor's goal of making North Carolina's system of education first in America by 2010. With that as the goal, the Education Cabinet shall set as a priority cooperative efforts between secondary schools and institutions of higher education so as to reduce the high school dropout rate, increase high school and college graduation rates, decrease the need for remediation in institutions of higher education, and raise certificate, associate, and bachelor degree completion rates. The Cabinet shall identify and support efforts that achieve the following purposes:

(1) Support cooperative innovative high school programs developed under Part 9 of Article 16 of Chapter 115C of the General Statutes.
(2) Improve high school completion rates and reduce high school dropout rates.
(3) Close the achievement gap.
(4) Create redesigned middle schools or high schools.
(5) Provide flexible, customized programs of learning for high school students who would benefit from accelerated, higher level coursework or early graduation.
(6) Establish high quality alternative learning programs.
(7) Establish a virtual high school.
(8) Implement other innovative education initiatives designed to advance the State's system of education.

(b) The Education Cabinet shall identify federal, State, and local funds that may be used to support these initiatives. In addition, the Cabinet is strongly encouraged to pursue private funds that could be used to support these initiatives.

(c) The Cabinet shall report by January 15, 2004, and annually thereafter, to the Joint Legislative Education Oversight Committee on its activities under this section. The annual reports may include recommendations for statutory changes needed to support cooperative innovative initiatives, including programs approved under Part 9 of Article 16 of Chapter 115C of the General Statutes. (2003-277, s. 1.)

Cross References. — As to Cooperative Innovative High School Programs, see G.S. 115C-238.50 et seq.

Editor's Note. — Session Laws 2003-277, s. 3, provides: "Local school administrative units and the State Board of Education shall identify, strengthen, and adopt policies and procedures that encourage students to remain in high school rather than to drop out and that encourage all students to pursue a rigorous academic course of study. As part of this process, the State Board and the local school administrative units are encouraged to eliminate or revise any policies or procedures that discourage some students from completing high school or that discourage any student from pursuing a rigorous academic course of study. No later than March 1, 2004, local school administrative units shall report to the State Board of Education the policies they have identified, strengthened, adopted, and eliminated under this section. No later than April 15, 2004, the State Board shall report to the Joint Legislative Education Oversight Committee on these policies as well as on the policies the Board has identified, strengthened, adopted, and eliminated under this section."

Session Laws 2003-277, s. 4, provides: "Nothing in this act shall be construed to obligate the General Assembly to make appropriations to implement this act."

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ARTICLE 1.
General Provisions.

§ 116D-1. Definitions.

The following definitions apply in this Chapter:

(1) Board of Governors. — The Board of Governors of the University.

(2) Capital facility. — Any one or more of the following for the University or for a community college:

a. One or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment and furnishings in connection therewith.

b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.

c. Land or an interest in land.

d. Other infrastructure.
The term includes, without limitation, classroom buildings, laboratory buildings, research facilities, libraries, physical education facilities, continuing education centers, student cafeterias, and activity facilities, including sports facilities, student and faculty housing facilities, and administrative office facilities.

(3) Cost. — Any of the following in financing the cost of capital facilities and special obligation bond projects, as authorized by this Chapter:
  a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving capital facilities and special obligation bond projects, including the acquisition of land, rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with a capital facility or special obligation bond project.
  b. The cost of engineering, architectural, and other consulting services as may be required.
  c. The cost of providing personnel to ensure effective project management.
  d. Finance charges, reserves for debt service, and interest prior to and during construction.
  e. Administrative expenses and charges incurred by the State in connection with the administration of a bond program created under this Chapter.
  f. The cost of bond insurance, investment contracts, credit enhancement, and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance.
  g. The cost of reimbursing the State for any payments made for any cost described in this subdivision.
  h. Any other costs and expenses necessary or incidental to the purposes of this Chapter.

(4) Credit facility. — An agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States, and providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State's agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(5) Fiscal period. — A fiscal biennium or a fiscal year of the fiscal biennium.

(6) Fiscal year. — The fiscal year of the State beginning on July 1 of one calendar year and ending on June 30 of the next calendar year.

(7) Par formula. — A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any bonds or notes, including:
  a. A provision providing for an adjustment so that the purchase price of bonds or notes in the open market would be as close to par as possible.
  b. A provision providing for an adjustment based upon a percentage or percentages of a prime rate or base rate, which percentages may vary or be applied for different periods of time.

c. A provision that the State Treasurer determines is consistent with this Chapter and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(8) Securities issued under this Chapter. — Any of the following:

a. University improvement general obligation bonds, refunding bonds, notes, and refunding notes issued under Article 2 of this Chapter.

b. Special obligation bonds, bond anticipation notes, and refunding bonds issued under Article 3 of this Chapter.

c. Community college general obligation bonds, refunding bonds, notes, and refunding notes issued under Article 4 of this Chapter.

(9) State. — The State of North Carolina.

(10) State Treasurer. — The incumbent Treasurer, from time to time, of the State.

(11) University. — The University of North Carolina and its constituent and affiliated institutions, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North Carolina School of Science and Mathematics, and the North Carolina Arboretum. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2004-124, s. 9.4, and by Session Laws 2006-146, ss. 3.1-3.3, and by Session Laws 2007-394, ss. 8 and 9, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3, makes provisions for proceeds of Community College General Obligation Bonds. See Editor's Notes at G.S. 116D-6 and 116D-41.

Session Laws 2000-3, s. 5(a) through (c), provides:

"Interpretation of Act.

"(a) Additional Method. This act provides an additional and alternative method for the doing of the things authorized by this act and shall be regarded as supplemental and additional to powers conferred by other laws. Except where expressly provided, this act shall not be regarded as in derogation of any powers now existing. The authority granted in this act is in addition to other laws now or hereinafter enacted authorizing The University of North Carolina to issue self-liquidating debt or other debt secured by designated sources of funds."

"(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

"(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-3, s. 5(d), contains a severability clause.

Session Laws 2000-3, s. 10, provides that the question of the issuance of the bonds authorized by Articles 2 and 4 of Chapter 116D of the General Statutes, as enacted by the act, and authorized by Sections 2 and 3 of the act, shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000, which election shall be conducted under the laws governing elections. Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

[ ] FOR [ ] AGAINST

the issuance of State of North Carolina Higher Education Improvement Bonds, constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to pay all or part of the cost of (i) renovating laboratories, classrooms, academic buildings, and worker training facilities and providing other capital improvements at the 59 institutions of the North Carolina Community College System in order to fulfill the mission of educating students and providing worker training essential to the North Carolina economy, and to address expected large increases in student enrollment, and (ii) renovating and replacing classrooms, laboratories, and academic buildings and providing other capital improvements at the 16 campuses of the constituent institutions, the affiliated institutions, and the Center for Public Television (UNC-TV) of the University of North

Carolina System in order to meet large expected student enrollment increases, serve North Carolina by providing the education critical to the State's economy, and continue to provide UNC-TV public television to the State's viewers; in the amount of three billion one hundred million dollars ($3,100,000,000).

The section further provides that if a majority of those voting on the bond question in the election vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act, and if a majority of those voting on the bond question in the election do not vote for the issuance of the bonds, the bonds shall not be issued. The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Session Laws 2000-3, s. 6, had duplicate text which Session Laws 2000-3, s. 1.1(2), which was codified as G.S. 116-13.1(a)(2).

Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2004-124, s. 9.4, Session Laws 2006-146, ss. 3.1-3.3, Session Laws 2007-394, ss. 8 and 9, and by Session Laws 2008-204, s. 2, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3, makes provisions for proceeds of Community College General Obligation Bonds. See Editor's notes at G.S. 116D-6 and 116D-41.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-2. General provisions.

(a) Signatures. — Should any officer whose signature or facsimile signature appears on securities issued under this Chapter cease to be that officer before the delivery of the securities, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the securities. Securities issued under this Chapter may bear the facsimile signatures of persons, who at the actual time of the execution of the securities were the proper officers to sign any security although at the date of the security those persons may not have been officers.

(b) Tax Exemption. — Securities issued under this Chapter shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of the securities, and franchise taxes. The interest on the securities is not subject to taxation as income.

(c) Investment Eligibility. — Securities issued under this Chapter are securities in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions, insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries. Securities issued under this Chapter are securities which may properly and legally be deposited with and received by any officer or agency of the State or a political subdivision of the State for any purpose for which the deposit of bonds or notes of the State or any political subdivision is now or may later be authorized by law.

(d) Inconsistent Laws. — All general, special, or local laws that are inconsistent with this Chapter do not apply to this Chapter. (2000-3, s. 1.2.)

§ 116D-3. Reports.

(a) Board of Governors. — The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the following:

(1) University Improvement General Obligation Bonds. — The Board of Governors shall report on projects funded by university improvement general obligation bonds under Article 2 of this Chapter, including the total project costs, the amount to be funded from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed. Each annual report shall include estimated operating costs for each project begun in the preceding fiscal year, including proposed sources of funds and anticipated dates for occupancy. Operating costs shall be projected for a period of at least 20 years from the date of anticipated project completion.

(2) Special Obligation Bonds. — The Board of Governors shall report on special obligation bonds issued under Article 3 of this Chapter, including the amount of debt, itemized for each institution of the University, by bond issue, and by project. The report shall include schedules of debt service requirements and actual payments, as well as evidence of compliance with additional financial covenants required by bond documents. The report shall identify the trends and current revenue streams of the sources of obligated resources pledged for each bond issue.

(b) Treasurer. — Upon issuance of university improvement general obligation bonds under Article 2 of this Chapter or community college general obligation bonds under Article 4 of this Chapter, the Treasurer shall forward a schedule of required payments of principal and interest over the life of the bonds to the Director of the Budget, with copies to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

The Treasurer shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the university improvement general obligation bonds issued under Article 2 of this Chapter and community college general obligation bonds issued under Article 4 of this Chapter, including the annual debt service requirements over the remainder of the life of the bonds.

(c) Community Colleges. — The Community Colleges System Office shall report quarterly to the Joint Legislative Education Oversight Committee on the projects funded from community college general obligation bonds. Each report shall include the total project costs, the amount to be funded from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed. (2000-3, s. 1.2.)

Cross References. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1. As to the duty of the Board of Governors to include, in its periodic report under this section, details of all allocations for repairs and renovations and cost overruns from bond proceeds allocated to the reserve, see the editor's notes under G.S. 116D-6.

§ 116D-4. Minority and historically underutilized business participation.

(a) Minority Business Participation. — The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this section. The following State agencies shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects. The State Construction Office, Department of Administration, shall monitor compliance with regard to projects funded by the proceeds of university improvement general obligation bonds and notes and special obligation bonds and notes; the Board of Governors of The University of North Carolina shall provide the State Construction Office any information required by the State Construction Office to monitor compliance. The Community Colleges System Office shall monitor compliance with regard to projects funded by the proceeds of community college general obligation bonds and notes.

(b) Participation in Providing Professional Services. — The Department of State Treasurer shall provide contracting opportunities for historically underutilized businesses in providing professional services in connection with the issuance of bonds and notes authorized by this section. As used in this subsection, the term "historically underutilized business" means a business described in G.S. 143-48. The Department of State Treasurer shall strive to increase the amount of legal, financial, and other professional services acquired by it from historically underutilized businesses. With the assistance of the Office for Historically Underutilized Businesses in the Department of Administration, the Department of State Treasurer shall set objectives for contracting with these businesses, identify and eliminate barriers or constraints that may restrict these businesses from contracting with the Department, and develop a plan for meeting its objectives. The Department of State Treasurer shall report quarterly to the Office for Historically Underutilized Businesses on its progress in carrying out the requirements of this subsection. (2000-3, s. 7(a), (b); 2001-487, s. 26.)

Editor's Note. — Session Laws 2000-3, s. 7(a) and (b), was codified as this section and the bracketed text inserted at the direction of the Revisor of Statutes.

§ 116D-5. Higher Education Bond Oversight Committee.

(a) Creation and Membership. — The Higher Education Bond Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of 10 members appointed as provided below. In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure geographical diversity among the membership.

(1) Three members shall be appointed by the Speaker of the House of Representatives.
(2) Three members shall be appointed by the President Pro Tempore of the Senate.
(3) Two members shall be appointed by the Chair of the Board of Governors of The University of North Carolina.
(4) Two members shall be appointed by the Chair of the State Board of Community Colleges.

(b) Terms. — Terms on the Committee are for three years and begin on January 15, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Duties. — The Committee shall:

(1) Call for reports and presentations from the following parties and convene for the purpose of hearing from the following parties:
    a. The University Facilities Office of each institution of The University of North Carolina.
    b. The Facilities Office of the General Administration of The University of North Carolina.
    c. The State Construction Office of the Department of Administration.
    d. The president of each community college, or the president's designee.
    e. The Administrative and Facilities Services Section of the North Carolina Community College System Office.
    f. The State Treasurer.
(2) Analyze and prepare recommendations, based on the information received under subdivision (1) of this subsection, concerning the following issues:
    a. Whether expenditures of the proceeds from the bonds issued under the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3, are in compliance with the provisions of the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3.
    b. Whether the awarded contracts are consistent with the budget and scope of the approved projects.
    c. Whether changes in construction methods could enhance cost savings and promotion of on-time completion of projects.
    d. Whether the bond issuances are adequately timed to reflect cash-flow requirements of the projects.

(d) Reports. — The Committee shall report annually to the Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Joint Legislative Commission on Governmental Operations.

(e) Organization. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least twice a year upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. — From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Higher Education Bond Oversight Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. — The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(h) Expiration. — The Higher Education Bond Oversight Committee terminates upon completion of all projects funded by bond proceeds issued under the Michael K. Hooker Higher Education Facilities Financing Act, S.L. 2000-3. (2000-3, s. 4(a)-(h); 2008-84, ss. 1, 2.)

Editor's Note. — Session Laws 2000-3, s. 4(a)-(h), was codified as this section and internal references changed at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-84, s. 1 and 2, effective July 11, 2008, substituted "annually" for "semiannually" in subsection (d); substituted "twice a year" for "once a quarter" in the second sentence of subsection (e).

ARTICLE 2.

General Obligation Bonds for Financing Capital Facilities for The University of North Carolina.

§ 116D-6. Short title.

This Article may be cited as the University Improvement General Obligation Bonds Finance Act. (2000-3, s. 1.2.)

Editor's Note. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1.

Session Laws 2000-3, s. 2(a), as amended by Session Laws 2001-424, s. 31.9, Session Laws 2002-126, s. 9.3, Session Laws 2003-284, s. 9.3, Session Laws 2006-146, ss. 3.1-3.3, Session Laws 2007-394, ss. 8 and 9, and by Session Laws 2008-204, s. 2, directs that the proceeds of university improvement general obligation bonds and notes, including any premium thereon, except the proceeds of university improvement general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of university capital facilities, to the extent and as provided in Article 2 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for each of the constituent or affiliated institutions.

Session Laws 2000-3, s. 2(b), authorizes the Director of the Budget to use excess funds to meet increased costs of other capital facilities located at the same institution, where the cost of a particular capital facility is less than the amount allocated for it and to do so would be in the best interest of the State and the University, and directs the Director to report to the Joint Legislative Commission on Governmental Operations on any such changes. Section 2(b) further authorizes the General Assembly, in its discretion, from time to time, to change any capital facility and the amount of the allocation for it set forth in the act. The provisions of G.S. 116-11(9) with respect to appropriations to the Board of Governors of The University of North Carolina do not apply to proceeds of university improvement general obligation bonds and notes issued pursuant to Article 2 of Chapter 116D of the General Statutes, as enacted by the act.

Session Laws 2000-3, s. 2(c), provides that allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in the act in connection with the issuance of university improvement general obligation bonds for that capital improvement or undertaking.

Session Laws 2000-3, s. 2(d), provides that the validity of university improvement general obligation bonds and notes issued under Article 2 of Chapter 116D of the General Statutes, as enacted by the act, is not affected by any subsequent adjustment of allocations, or by any failure to comply with the reporting requirements provided in the act.

Session Laws 2000-3, s. 2(e), provides that bond proceeds allocated to the reserve for repairs and renovations and cost overruns are to be used only for repairs and renovations for institutions listed in the section and for additional costs needed for projects listed due to cost overruns. The subsection authorizes the Board of Governors, subject to the approval of the Director of Budget, to determine the capital facilities for which bond proceeds in the reserve may be used. The Board of Governors is directed to include the details of all allocations made pursuant to this subsection in its periodic reports under G.S. 116D-3 to the Joint Legislative Commission on Governmental Operations.

Session Laws 2000-3, s. 2(f), provides that it is the intent of the General Assembly that every effort be made to preserve the architectural and historic fabric of the buildings being renovated pursuant to the section.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-208, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-7. Definitions.

The following definitions apply in this Article:

(1) Bonds. — Bonds authorized to be issued under this Article, including refunding bonds.

(2) Notes. — Notes issued under this Article.

(3) University improvement general obligation bonds. — Bonds authorized to be issued under this Article, including refunding bonds. (2000-3, s. 1.2.)

§ 116D-8. Authorization of bonds and notes.

Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing university improvement general obligation bonds in the election held as provided by law, the State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, university improvement general obligation bonds of the State to be designated "State of North Carolina University Improvement General Obligation Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed two billion five hundred million dollars ($2,500,000,000). The bonds and notes shall be issued in the following years up to the following amounts:

Fiscal Year	Aggregate Amount
2000-2001	$ 201,600,000
2001-2002	241,900,000
2002-2003	483,900,000
2003-2004	483,900,000
2004-2005	564,500,000
2005-2006	524,200,000

If less than the aggregate amount of bonds or notes authorized to be issued in a fiscal year is issued in that fiscal year, the balance for that fiscal year may be issued in any subsequent fiscal year. Refunding bonds and notes issued pursuant to G.S. 116D-11(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of improvement, construction, and acquisition of capital facilities for the University or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-9. (2000-3, s. 1.2.)

§ 116D-9. Designation of capital facilities and preconditions to bond issuance.

The capital facilities to be financed in whole or in part with the proceeds of university improvement general obligation bonds shall be set forth in legislation enacted from time to time by the General Assembly. This legislation shall also provide for voter approval of the bonds to finance the capital facilities and shall become effective only upon approval by the voters. The proceeds of university improvement general obligation bonds shall not be expended to pay the costs of any capital facilities other than those set forth in that legislation. (2000-3, s. 1.2.)

§ 116D-10. Faith and credit.

The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State retains the right to amend any provision of this Article to the extent it does not impair any contractual right of a bond owner. (2000-3, s. 1.2.)

§ 116D-11. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.

(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.

(3) For the renewal of any loan evidenced by notes authorized in this Article.

(4) For the purposes authorized in this Article.

(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) University Improvement Bonds Fund. — The proceeds of university improvement general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "University Improvement Bonds Fund". Moneys in the University Improvement Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any university improvements authorized by this Article may be placed by the State Treasurer in the University Improvement Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of university improvement general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of university improvements, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of university improvement bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for university improvements shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. (2000-3, s. 1.2; 2001-414, s. 45; 2006-203, s. 56.)

Editor's Note. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1.

As to the authority of the Director of the Budget and of the General Assembly to use excess funds to meet increased costs of other capital facilities located at the same institution or to otherwise change allocations where to do so would be in the best interest of the State and the University, see the Editor's Note under G.S. 116D-6.

The bracketed text in subsection (g) has been inserted at the direction of the Revisor of Statutes as it appears to be the intended reference.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 56, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes" at the end of the third paragraph of subsection (g). See Editor's note for applicability.

§ 116D-12. Variable rate demand bonds and notes.

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2000-3, s. 1.2.)

§ 116D-13. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary. (2000-3, s. 1.2.)

§§ 116D-14 through 116D-20: Reserved for future codification purposes.

ARTICLE 3.

Special Obligation Bonds for Improvements to the Facilities of The University of North Carolina.

§ 116D-21. Purpose.

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue special obligation bonds, payable from obligated resources, but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision of the State, to pay the cost, in whole or in part, of improvements to the facilities of the University. (2000-3, s. 1.2.)

Editor's Note. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1.

Session Laws 2008-204, ss. 1.1 through 1.9, authorizes construction of specified improvement projects at University of North Carolina constituent institutions and the funding therefore.

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-22. Definitions.

The following definitions apply in this Article:

(1) Existing facilities. — Buildings and facilities then existing that generate income or receipts to the Board of Governors that are pledged, under the provisions of a resolution authorizing the issuance of the special obligation bonds under this Article, to the payment of the bonds.

(2) Institution. — Each of the institutions enumerated in G.S. 116-2, and any affiliated institutions of the University, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North

Carolina School of Science and Mathematics, and the North Carolina Arboretum.

(3) Obligated resources. — Any sources of income or receipts of the Board of Governors or the institution at which a special obligation bond project is or will be located that are designated by the Board as the security and source of payment for bonds issued under this Article to finance a special obligation bond project, including, without limitation, any of the following:

a. Rents, charges, or fees to be derived by the Board of Governors or the institution from any activities conducted at the institution.

b. Earnings on the investment of the endowment fund of the institution at which a special obligation project will be located, to the extent that the use of the earnings will not violate any lawful condition placed by the donor upon the part of the endowment fund that generates the investment earnings.

c. Funds to be received under a contract or a grant agreement, including "overhead costs reimbursement" under a grant agreement, entered into by the Board of Governors or the institution to the extent the use of the funds is not restricted by the terms of the contract or grant agreement or the use of the funds as provided in this Article does not violate the restriction.

Obligated resources do not include funds appropriated to the Board of Governors or the institution from the General Fund by the General Assembly from funds derived from general tax and other revenues of the State, and obligated resources do not include tuition payment by students.

(4) Special obligation bonds. — Bonds issued under this Article to finance the cost of a special obligation project, which bonds are secured by and payable from obligated resources designated by the Board of Governors at the time the issuance of the bonds is authorized in accordance with this Article.

(5) Special obligation bond project. — Any capital facilities located or to be located at an institution for the purpose of carrying out the mission of that institution and designated specifically by the Board of Governors as a "special obligation bond project" for purposes of this Article. A special obligation bond project need not necessarily consist of buildings or facilities that are expected to generate "self-liquidating revenues" to the Board of Governors or the institution from direct rentals, charges, or fees from the services provided by the building or facility, and may include facilities such as classroom buildings, administration buildings, research facilities, libraries, and equipment that do not produce direct, or indirect, income to the Board of Governors or the institution. (2000-3, s. 1.2.)

Editor's Note. — Session Laws 2005-324, s. 7, provides: "With respect to the University of North Carolina at Chapel Hill's Water Reclamation and Reuse Infrastructure capital project and Research Resource Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may accomplish the project either through (i) direct ownership of the project or (ii) purchase of capacity in the project from the Orange Water and Sewer Authority."

Session Laws 2005-324, s. 8, provides: "With respect to the project at Winston-Salem State University for the Bowman Gray Stadium Field House — Expansion and Renovation, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and either through (i) direct ownership of the project, or (ii) by participation in a long-term agreement with the City of Winston-Salem."

Session Laws 2006-146, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-

22(5) as to location at the institution."

Session Laws 2008-204, s. 1.6, provides: "With respect to the University of North Carolina at Chapel Hill's Research Resource Facility — Phase III capital project, East Carolina University's Athletic Facilities Expansion and Improvements capital project, and North Carolina State University's Avent Ferry Administration Center Renovation capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution."

Session Laws 2008-204, s. 1.9, provides: "With respect to the University of North Carolina at Chapel Hill's Cogeneration and Steam Infrastructure Improvements and Expansion capital project, the institution may accomplish the construction and financing of the Landfill Gas Utilization portion thereof notwithstanding the requirement in G.S. 116D-22(5) as to location of the special obligation project at the institution. The University of North Carolina at Chapel Hill may enter into any other required agreements as necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such acquisition, negotiation, and execution of such rights-of-way, easements, leases, or other required agreements therefor."

§ 116D-23. Credit and taxing power of State not pledged; statement on face of bonds.

Special obligation bonds issued under this Article shall not constitute a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or of any political subdivision of the State. Special obligation bonds shall be secured solely by the obligated resources pledged to their payment. All of the special obligation bonds shall contain on their face a statement to the effect that neither the State nor the Board of Governors is obligated to pay the bonds or the interest on the bonds except from the obligated resources pledged for payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality of the State is pledged to the payment of the principal of or the interest on the bonds. The issuance of special obligation bonds under this Article does not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes for the bonds. (2000-3, s. 1.2.)

§ 116D-24. General powers of Board of Governors.

The Board of Governors is authorized, subject to the requirements of this Article, to do all of the following:

(1) Determine the location and character of any special obligation bond project, to acquire, construct, and provide the project, and to maintain, repair, and operate and enter into contracts for the management, lease, use, or operation of all or any portion of any special obligation bond project and any existing facilities.

(2) Issue special obligation bonds to pay all or any part of the cost of a special obligation bond project, and to fund or refund any bonds previously issued by the Board of Governors to finance facilities designated as a special obligation bond project.

(3) Fix and revise from time to time and charge and collect fees, rates, rents, charges, and other income for the use of and for the services furnished by the institution that are designated as obligated resources in connection with a special obligation bond issue.

(4) Establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules for the use of and services rendered by the institution of the income or receipts to be obtained from the use or services designated as obligated resources in connection with a special obligation bond issue.

(5) Acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties and to lease all

or any part of a special obligation bond project and any existing facilities for any periods of years, not exceeding 40 years, upon any terms and conditions as the Board of Governors determines, subject to the provisions of G.S. 143-341.

(6) Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and any other employees and agents as may be necessary in its judgment in connection with a special obligation bond project and existing facilities, and to fix their compensation.

(7) Enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) Receive and accept from any federal, State, or other public agency and any private agency, person, or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for a special obligation bond project or any other services provided by the institution that is designated as the obligated resource in connection with a special obligation bond issue, and to agree to apply and use them in accordance with the terms and conditions under which they are provided.

(9) Do all acts and things necessary or convenient to carry out the powers granted by this Article. (2000-3, s. 1.2.)

§ 116D-25. Consultation with the Joint Legislative Commission on Governmental Operations.

Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations before giving approval. (2000-3, s. 1.2.)

§ 116D-26. Issuance of special obligation bonds and bond anticipation notes.

(a) Authority. — The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing a special obligation project. Before issuing special obligation bonds, the Board of Governors shall first adopt a resolution (i) setting forth the designation by the Board of Governors that the buildings or facilities to be financed by the bond issue are the special obligation bond project being financed and (ii) designating the obligated resources that will secure and be the source of payment of the special obligation bonds to be issued. The Board of Governors shall not issue any special obligation bonds unless the Board of Governors finds that sufficient obligated resources are reasonably expected to be available (i) to pay the principal and interest on the special obligation bonds proposed to be issued, (ii) to create and maintain any reserves for the payment of the special obligation bonds, to the extent the Board of Governors is required to maintain reserves for this purpose by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds, and (iii) to provide for the maintenance and operation of the facilities that are to generate the obligated resources to the extent the Board of Governors is required to maintain those facilities by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds. Notwithstanding any other provision of this Article, the proceeds of special obligation bonds to be secured by obligated resources derived from the operation of or activities at one institution may not be applied to finance a special obligation project to be located at another institution.

(b) Approval Required. — The Board of Governors shall not issue any special obligation bonds for a project at an institution unless the board of trustees of that institution has approved the issuance of bonds for that project. The Board of Governors shall not issue special obligation bonds under this Article until the effective date of legislation enacted by the General Assembly authorizing the undertaking of the special obligation bond project to be financed and fixing the maximum aggregate principal amount of special obligation bonds that shall be issued for that purpose. In submitting proposed special obligation bond projects to the General Assembly for approval, the Board of Governors shall submit information on the need for each project, project costs, estimates of increased operating costs upon completion, estimated debt service requirements, and the sources and amounts of obligated resources to be pledged for the repayment of the bonds. If the obligated resources to repay the bonds or to operate the proposed project potentially involve increased costs to students or to the General Fund, these costs shall be identified in the Board of Governors' submission.

Except as provided in this Article, special obligation bond projects may be undertaken, special obligation bonds may be issued, and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things which are specifically required by this Article.

(c) Term; Form. — The special obligation bonds of each issue shall be dated, shall mature at any times not exceeding 30 years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity at the option of the Board, at any prices and under any terms and conditions as may be fixed by the Board prior to the issuance of the special obligation bonds. The Board of Governors shall determine the form and manner of execution of the special obligation bonds and shall fix the denominations of the special obligation bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any special obligation bonds issued under the provisions of this Article, all special obligation bonds shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the special obligation bonds or a trust agreement securing the bonds. The Board of Governors may sell the special obligation bonds in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

(d) Proceeds; Additional Bonds. — The proceeds of the special obligation bonds of each issue shall be used solely for the purpose for which the bonds have been authorized and shall be disbursed in the manner and under such restrictions, if any, as the Board of Governors may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing them. Unless otherwise provided in the authorizing resolution or in the trust agreement securing the special obligation bonds, if the proceeds of the special obligation bonds, by error of estimates or otherwise, are less than the cost of the special obligation bond project, additional bonds may in like manner be issued to provide the amount of the deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of special obligation bonds, and any trust agreement securing them, may also contain limitations upon the issuance of additional special obligation bonds as the Board of Governors considers proper, and the additional special obligation bonds must be issued under the restrictions and limitations prescribed by the resolution or trust agreement.

(e) Temporary Bonds; Notes. — Before preparing definitive bonds, the Board of Governors may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which become mutilated, destroyed, or lost.

The Board of Governors may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing special obligation bonds for the financing of special obligation bond projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of the special obligation bonds.

(f) Bond Anticipation Notes. — The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, bond anticipation notes of the Board of Governors in anticipation of the issuance of special obligation bonds authorized by this Article. The principal of and the interest on these notes shall be payable solely from the proceeds of special obligation bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from the obligated resources designated for their payment. The notes of each issue shall be dated, shall mature at any times not exceeding 30 years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity, at the option of the Board of Governors, at any prices and under any terms and conditions as may be fixed by the Board of Governors prior to the issuance of the notes. If the Board of Governors issues a bond anticipation note for a term in excess of three years, no individual project may be funded from the proceeds of the note for longer than three years. The Board shall determine the form and the manner of execution of the notes and shall fix the denominations of the notes and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all notes shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the notes or any trust agreement securing the bonds in anticipation of which the notes are being issued. The Board of Governors may sell the notes in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

The proceeds of the notes shall be used solely for the purpose for which the special obligation bonds have been authorized, and the note proceeds shall be disbursed in any manner and under any restrictions as the Board of Governors may provide in the resolution authorizing the issuance of the notes or bonds or in the trust agreement securing the special obligation bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the special obligation bonds in anticipation of which the notes are being authorized, may also contain limitations upon the issuance of additional notes as the Board of Governors considers proper, and such additional notes shall be issued under the restrictions and limitations prescribed by the resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated, destroyed, or lost.

Except as provided in this Article, notes may be issued under this Article and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context indicates otherwise, the word "bonds", wherever used in this Article, include the words "bond anticipation notes." (2000-3, s. 1.2; 2003-357, s. 1.)

Editor's Note. — Session Laws 2005-324, s. 6, provides: "Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 2 and 3 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus twenty million dollars ($20,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest." For similar provisions, see Session Laws 2002-173, s. 5.

Session Laws 2006-146, s. 1.5, provides: "Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 1.2 and 1.3 of this part. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 1.2 and 1.3 of this part plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 1.4 of this part."

Session Laws 2009-540, s. 4, provides: "Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Section 2 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 3 of this act."

§ 116D-27. Trust agreement; money received deemed trust funds; insurance; remedies.

(a) Trust Agreement Securing Bonds. — In the discretion of the Board of Governors and subject to the approval of the Director of the Budget, any special obligation bonds issued under this Article may be secured by a trust agreement by and between the Board of Governors and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of special obligation bonds may pledge or assign the obligated resources designated as security for the special obligation bonds, but shall not convey or mortgage any property of the institution. The trust agreement or resolution providing for the issuance of special obligation bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the special obligation bonds that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board of Governors in relation to the acquisition, construction, or provision of any of the charging and collecting of any rates, fees, or charges that have been designated as obligated resources, the maintenance, repair, operation, and insurance of any property of the institution, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of special obligation bonds or funds securing special obligation bonds to furnish any indemnifying bonds or to pledge any securities as may be required by the Board of Governors. A trust agreement or resolution may set forth the rights and remedies of the holders of the special obligation bonds and the rights, remedies, and immunities of the trustee or trustees, if any, and may restrict the individual right of action by the holders. In addition to the foregoing, a trust agreement or resolution may contain other provisions the Board of Governors considers reasonable and proper for the security of the holders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the special obligation bond projects for which the special obligation bonds are issued or as an expense of operation of the special obligation bond project.

(b) Trust Funds. — All moneys received pursuant to the authority of this Article, whether as proceeds from the sale of bonds, or as obligated resources, are trust funds to be held and applied solely as provided in this Article. The Board of Governors may provide for the payment of all or part of the proceeds of the sale of the special obligation bonds and the obligated resources to any officer, board, or depositary that it may designate for their custody, and may provide for their method of disbursement, with any safeguards and restrictions it may determine. Any officer with whom, or any bank or trust company with which, moneys are deposited shall act as trustee of the moneys and shall hold and apply them for the purposes of this Article, subject to any requirements provided in this Article and in the resolution or trust agreement, authorizing or securing the special obligation bonds.

(c) Insurance. — Notwithstanding the provisions of any other law, the Board of Governors may carry insurance on any special obligation bond projects and any existing facilities in any amounts and covering any risks it considers advisable.

(d) Remedies. — Any holder of special obligation bonds issued under this Article and the trustees under a trust agreement, except to the extent the rights given in this section may be restricted by the trust agreement or the resolution authorizing the issuance of the special obligation bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted under this Article or under the trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution to be performed by the Board of Governors or by any of its officers, including the fixing, charging, and collecting of obligated resources. (2000-3, s. 1.2.)

§ 116D-28. Fixing and collecting obligated resources.

(a) Board to Provide Sufficient Resources. — For the purpose of aiding in the financing of a special obligation bond project and to provide security to the owners of the special obligation bonds issued to finance the special obligation bond project, the Board of Governors is authorized, to the extent the generation of the obligated resources is in the control of the Board, to fix, revise from time to time, charge, and collect the rents, charges, fees, or other revenues constituting the obligated resources. Fees and other revenue sources constituting obligated resources may be imposed or increased only with the approval of the Board of Governors. As long as any special obligation bonds issued under this Article and payable from those obligated resources are outstanding, the obligated resources, to the extent within the control of the Board of Governors, shall be so fixed and adjusted, with relation to other funds available, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing the special obligation bonds and at least sufficient to pay the principal of and the interest on the special obligation bonds as they become due and payable, to assure the continued collection of the obligated resources, and to create and maintain reserves for these purposes. A sufficient amount of the obligated resources, except any part that may be necessary to pay the cost of maintenance, repair, and operation, and to provide reserves for these purposes and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of the special obligation bonds or in the trust agreement securing the same, shall be set aside at regular intervals as may be provided in the resolution or trust agreement authorizing the issuance of the special obligation bonds in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on the special obligation bonds as they become due and the redemption price or the purchase price of special obligation bonds retired by call or purchase as provided in the resolution or trust agreement. This pledge shall be valid and binding from the time it is made, the obligated resources so pledged and thereafter received by the Board of Governors shall immediately be subject to the lien of the pledge without any physical delivery of the pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board of Governors, irrespective of whether the parties have notice of the pledge. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board of Governors. The use and disposition of moneys to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the special obligation bonds or of the trust agreement securing the bonds.

(b) State Pledge. — The State pledges to, and agrees with, the holders of any special obligation bonds or notes issued by the Board of Governors pursuant to this Article that as long as any of the special obligation bonds or notes are outstanding and unpaid, the State will not limit or alter the rights vested in the Board of Governors at the time of issuance of the special obligation bonds or notes to set the terms and conditions of the special obligation bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the special obligation bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders are fully paid, met, and discharged. (2000-3, s. 1.2.)

§ 116D-29. Vesting powers in committee.

The Board of Governors may authorize its budget and finance committee to sell any special obligation bonds which the Board has, with the approval of the Director of the Budget, authorized to be issued under this Article in any manner and under any limitations or conditions as the Board prescribes and to perform other functions under this Article the Board determines. (2000-3, s. 1.2.)

§ 116D-30. Refunding bonds.

The Board of Governors may, subject to the approval of the Director of the Budget, issue from time to time refunding bonds for the purpose of refunding any bonds by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds refunded. The Board of Governors is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding bonds for the combined purpose of (i) refunding any bonds issued by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional special obligation bond projects.

This Article, as applicable, governs the issuance of refunding bonds, their maturities and other details, the rights and remedies of their holders, and the rights, powers, privileges, duties, and obligations of the Board of Governors with respect to them. (2000-3, s. 1.2.)

§ 116D-31. Additional and alternative method.

This Article provides an additional and alternative method for the doing of the things authorized and is supplemental and additional to powers conferred by other laws, including G.S. 116-175 to G.S. 116-185, inclusive and G.S. 116-197 and G.S. 116-198, and is not in derogation of or repealing any powers now existing under any other law, whether general, special, or local. The issuance of special obligation bonds or refunding bonds under this Article, however, need not comply with the requirements of any other law applicable to the issuance of bonds. (2000-3, s. 1.2.)

§§ 116D-32 through 116D-40: Reserved for future codification purposes.

ARTICLE 4.

Community Colleges Facilities General Obligation Finance Act.

§ 116D-41. Short title.

This Article may be cited as the Community College Facilities General Obligation Finance Act. (2000-3, s. 1.2.)

Editor's Note. — As to the interpretation and implementation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1.

Session Laws 2000-3, s. 3(a), provides that the proceeds of community college general obligation bonds and notes, including any premium thereon, except the proceeds of community college general obligation bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, are to be allocated and expended for paying the cost of community college capital facilities, to the extent and as provided in Article 4 of Chapter 116D of the General Statutes, as enacted by the act and subject to change as provided in the act, and sets out a schedule of allocations for new construction and repair and renovations for each community college, campus, and center.

Session Laws 2000-3, s. 3(b) provides: "Except as provided in this subsection, a community college may use the bond proceeds allocated in subsection (a) of this section for repair and renovation only in accordance with the repair and renovation formula adopted by the State Board of Community Colleges in May 1998, as supplemented by additional repair and renovation needs determined by the State Board of Community Colleges as of April 2000. The following provisions govern reallocations:

"(1) New Construction. — Except as provided in this paragraph, new construction funds allocated in this section to a specific site may not be allocated to another site. If the local board of trustees of a community college determines that new construction funds allocated to a specific site are not needed at that site, the board may request that the State Board of Community Colleges reallocate those funds for new construction at another site of the community college. Except in the case of Mayland Community College, the funds may not be reallocated from a site outside the main campus county to a site within the main campus county. If the State Board of Community Colleges determines that the funds are not needed for new construction at the site for which they were originally allocated, it shall approve the reallocation to the other site and shall substitute the proposed facility at the other site in the Community Colleges System Office's application to the State Treasurer pursuant to G.S. 116D-43.

"Each community college shall submit to the State Board of Community Colleges a statement (i) proposing the capital facilities to be financed with the proceeds of community college general obligation bonds allocated to that community college, (ii) certifying that the proposed site is included in the allocations in this section or is a substitute facility at another site because the funds are not needed for new construction at the site for which they are allocated in this section, (iii) certifying that the community college is prepared to proceed with the construction, acquisition, or improvement of the proposed capital facilities, and (iv) demonstrating that the applicable matching requirements have been or will be met.

"Upon receipt by the State Board of Community Colleges of the information set forth above, the Board shall add the proposed capital facilities to the next application of the Community Colleges System Office to the State Treasurer to issue bonds pursuant to G.S. 116D-43.

"The board of trustees of an individual community college may use funds allocated for new construction either for new construction or for repair and renovations.

"(2) Repair and Renovations. — The board of trustees of a community college may use funds allocated for repair and renovations only for repair and renovations, and not for new construction. Funds allocated for repair and renovations shall be directed by the local board of trustees of a community college among the State Board approved sites of the community college on the basis of need, subject to approval by the State Board of Community Colleges.

"(3) Reallocation by General Assembly. — The projected allocations set forth above may be changed from time to time as the General Assembly may decide."

Session Laws 2000-3, s. 3(c), provides: "The match requirements of Chapter 115D of the General Statutes apply to bond proceeds allocated in this section for new construction except as provided in this subsection. The consultant hired by the State Board of Community Colleges to determine funding formulas for the community college system developed an index to measure each county's ability to pay. The consultant found that some counties are unable to meet their local match requirement under Chapter 115D of the General Statutes because of inability to pay. The consultant recommended applying the "ability to pay" index to generate an adjusted matching rate. Accordingly, community colleges are required to match bond proceeds allocated for new construction in this section only as follows: Community colleges assigned an adjusted matching rate of less than forty percent (40%) in the ability to pay portion of the formula adopted by the State Board of Community Colleges in March 2000 are not required to match, and community colleges assigned an adjusted matching rate of forty percent (40%) or more in the ability to pay portion of the formula are required to match only at the assigned rate."

Session Laws 2000-3, s. 3(d), as amended by Session Laws 2006-66, s. 8.8, provides: "If the State Board of Community Colleges determines that a community college has not met its matching requirements by July 1, 2007, with respect to a capital improvement project for which bond proceeds are allocated in this act, the Board shall certify that fact to the State Treasurer by October 1, 2007. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, 2007, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

"(1) The State Board of Community Colleges shall generate, by October 1, 2007, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including actual and projected enrollment, space requirements, current capacity, construction costs, and any other factors the State Board considers relevant.

"(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:

"a. No projected allocation shall be made for a community college that the Board certified in accordance with this subsection had failed to meet a matching requirement.

"b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.

"c. Funds shall not be allocated for more than one project per community college.

"(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section.

The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

Session Laws 2000-3, s. 3(e), designates the North Carolina Center for Applied Technology as a community college with a matching rate of less than forty percent (40%), for the purposes of the act.

Session Laws 2000-3, s. 3(f), provides that, notwithstanding G.S. 143-341(3)a.2., G.S. 143-341(3) applies only to funds provided by this act for construction or renovation of community college buildings requiring an estimated expenditure of more than two hundred fifty thousand dollars ($250,000).

Session Laws 2000-3, s. 3(g), provides that the validity of community college general obligation bonds and notes issued under Article 4 of Chapter 116D of the General Statutes, as enacted by the act, is not affected by any subsequent adjustment of allocations or matching requirements provided in the act, or by any failure to comply with matching requirements or reporting requirements provided in the act.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

§ 116D-42. Definitions.

The following definitions apply in this Article:

(1) Bonds. — Bonds authorized to be issued under this Article, including refunding bonds.

(2) Community college. — Defined in G.S. 115D-2.

(3) Community college general obligation bonds. — Bonds authorized to be issued under this Article, including refunding bonds.

(4) Community Colleges System Office. — The North Carolina Community Colleges System Office, created by Article 1 of Chapter 115D of the General Statutes, or if the Community Colleges System Office is abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this Article to the Community Colleges System Office.

(5) Notes. — Notes issued under this Article. (2000-3, s. 1.2.)

§ 116D-43. Authorization of bonds and notes.

Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing community college general obligation bonds in the election held as provided by law, and upon the application of the Community Colleges System Office, the State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, community college general obligation bonds of the State to be designated "State of North Carolina Community College General Obligation Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed six hundred million dollars ($600,000,000). The bonds and notes shall be issued in the following years up to the following amounts:

Fiscal Year	Aggregate Amount
2000-2001	$ 48,400,000
2001-2002	58,100,000
2002-2003	116,100,000
2003-2004	116,100,000
2004-2005	135,500,000
2005-2006	125,800,000

If less than the aggregate amount of bonds or notes authorized to be issued in a fiscal year is issued in that fiscal year, the balance for that fiscal year may be issued in any subsequent fiscal year. Refunding bonds and notes issued pursuant to G.S. 116D-46(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of grants to be made by the State to community colleges to finance the cost of capital facilities for the community college or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-44. (2000-3, s. 1.2.)

Editor's Note. — As to the purpose and interpretation of the Michael K. Hooker Higher Education Facilities Financing Act, Session Laws 2000-3, see the Editor's Note under G.S. 116D-1.

§ 116D-44. Designation of capital facilities and preconditions to bond issuance.

The capital facilities to be financed in whole or in part with the proceeds of community college general obligation bonds shall be described in legislation enacted from time to time by the General Assembly. This legislation shall also provide for voter approval of the bonds to finance the capital facilities and shall become effective only upon approval by the voters. The proceeds of community college general obligation bonds shall not be expended to pay the costs of any capital facilities other than those described in that legislation. (2000-3, s. 1.2.)

§ 116D-45. Faith and credit.

The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. The State retains the right to amend any provision of this Article to the extent it does not impair any contractual right of a bond owner. (2000-3, s. 1.2.)

§ 116D-46. Issuance of bonds and notes.

(a) Terms and Conditions. — Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. — Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. — Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. — By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.

(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.

(3) For the renewal of any loan evidenced by notes authorized in this Article.

(4) For the purposes authorized in this Article.

(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. — By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) Community College Bonds Fund. — The proceeds of community college general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Community College Bonds Fund". Moneys in the Community College Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any community college capital facilities authorized by this Article may be placed by the State Treasurer in the Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of community college general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of grants to community colleges for capital facilities, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of community college bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for grants to community colleges shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. (2000-3, s. 1.2; 2001-414, s. 46; 2006-203, s. 57.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 57, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "the State Budget Act, Chapter 143C of the General Statutes" for "the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes" at the end of subsection (g).

§ 116D-47. Variable rate demand bonds and notes.

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2000-3, s. 1.2.)

§ 116D-48. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary. (2000-3, s. 1.2.)

§ 116D-49. Procurement of capital facilities.

Any laws, rules, or regulations of the State that relate to the acquisition and construction of capital facilities shall apply to the capital facilities financed pursuant to this Article. (2000-3, s. 1.2.)

§ 116D-47. Variable rate demand bonds and notes.

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any period of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variation as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer. (2000-3, s. 1.2.)

§ 116D-48. Other agreements.

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary. (2000-3, s. 1.2.)

§ 116D-49. Procurement of capital facilities.

Any laws, rules, or regulations of the State that relate to the acquisition and construction of capital facilities shall apply to the capital facilities financed pursuant to this Article. (2000-3, s. 1.2.)

Chapter 117.

Electrification.

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ARTICLE 1.

Rural Electrification Authority.

§ 117-1. Rural Electrification Authority created; appointments; terms of members.

An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such agency to consist of five members to be appointed by the Governor of North Carolina. Current members of the North Carolina Rural Electrification Authority shall complete their respective terms of office. On or after June 5, 1975, the Governor shall appoint two members to replace those members whose terms expire on said date. All appointments made by the Governor shall be made for terms of four years. (1935, c. 288, s. 1; 1975, c. 709, s. 7.)

State Government Reorganization. — The Rural Electrification Authority was transferred to the Department of Commerce by G.S. 143A-185 (now repealed), enacted by Session Laws 1971, c. 864.

Legal Periodicals. — For analysis of this Chapter, see 13 N.C.L. Rev. 382 (1935).

For article on Public Utilities — Rural Electrification Cooperatives — Certificate of Convenience and Necessity, see 16 N.C.L. Rev. 46 (1938).

CASE NOTES

Cited in State ex rel. Util. Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969); Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

§ 117-2. Powers.

The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

(1) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.

(2) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.

(3) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.

(4) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this Chapter, to be known as "electric membership corporations."

(5) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.

(6) To have authority to call upon the Utilities Commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the Utilities Commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.

(7) To have the power of eminent domain for the purpose of condemning rights-of-way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law. For the purposes of exercising the powers of eminent domain the North Carolina Rural Electrification Authority shall be deemed a private condemnor and shall follow the procedures of Chapter 40A for a private condemnor.

(8) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.

(9) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.

(10) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.

(11) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.

(12) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2; 1981, c. 919, s. 12.)

CASE NOTES

Cited in Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

§ 117-2.1. Additional powers.

In addition to the powers provided in G.S. 117-2, the Authority is empowered, authorized and directed to make, promulgate and implement plans and programs whereby the electric membership corporations organized or domesticated under this Chapter shall promote and foster methods of conserving electric energy in accordance with provisions of the National Energy Act as delegated to the states. (1979, c. 285, s. 1.)

§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.

The Authority itself shall not be a rate-making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the Utilities Commission of North Carolina, and the Authority shall only have the right of suggestion and petition to the Utilities Commission of its opinion as to the proper rates and service charges and line extensions, and no rate recommended or suggested by the Authority shall be effective until approved by the Utilities Commission: Provided, that if the Utilities Commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the Utilities Commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this Article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

CASE NOTES

Cited in State ex rel. North Carolina Util. Comm'n v. Municipal Corps., 243 N.C. 193, 90 S.E.2d 519 (1955).

§ 117-3.1. Regulatory fee.

(a) Fee imposed. — It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate. — For each fiscal year, the regulatory fee shall be the greater of the following:

(1) The rate established by the General Assembly for that year for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

(2) Four cents (4¢) for each electric membership corporation's North Carolina meter connected for service and for each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

When the Authority prepares its budget request for the upcoming fiscal year, the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. — The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. — A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter. (1991, c. 473, s. 1; 1991 (Reg. Sess., 1992), c. 803, s. 1; 2006-203, s. 58.)

Editor's Note. — Session Laws 1991, c. 473, s. 2 provides: "Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

Session Laws 2006-203, s. 126, provides in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 58, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-3-5" for "G.S. 143-11" in the second sentence of the second paragraph of subsection (b); and substituted "State Budget Act" for "Executive Budget Act" in the first sentence of the last paragraph of subsection (d).

§ 117-4. Organization meeting of Authority; chairman and secretary.

Promptly after their appointment the Authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in G.S. 143-35 to 143-47. (1935, c. 288, s. 4.)

Editor's Note. — Sections 143-35 to 143-47, referred to in this section, were repealed by Session Laws 1965, c. 640, s. 1. For present statutory provisions relating to the State Personnel System, see Chapter 126.

§ 117-5. Compensation and expenses.

All members of the Authority, except the secretary, shall receive as compensation for their services per diem and actual expenses incurred while in the performance of their duties in accordance with the provisions of G.S. 138-5. (1935, c. 288, s. 5; 1939, c. 97; 1975, c. 709, s. 8.)

ARTICLE 2.

Electric Membership Corporations.

§ 117-6. Title of Article.

This Article may be cited as the "Electric Membership Corporation Act." (1935, c. 291, s. 1.)

Local Modification. — Carteret, Craven, Greene, Hoke, Onslow, Pamlico and Pitt: 1941, c. 314.

Legal Periodicals. — For 1984 survey of commercial law, "Utilities — Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

CASE NOTES

Purpose of Article. — The North Carolina legislation with respect to electric membership corporations was enacted to implement the act of Congress creating the Rural Electrification Administration. State ex rel. North Carolina Util. Comm'n v. Municipal Corps., 243 N.C. 193, 90 S.E.2d 519 (1955).

Cited in Carolina Power & Light Co. v. Bowman, 228 N.C. 319, 45 S.E.2d 531 (1947); Pitt & Greene Elec. Membership Corp. v. Carolina Power & Light Co., 255 N.C. 258, 120 S.E.2d 749 (1961); State ex rel. Util. Comm'n v. Haywood Elec. Membership Corp., 260 N.C. 59, 131 S.E.2d 865 (1963); Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-7. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) "Acquire" shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.
(2) "Board" shall mean the board of directors of a corporation formed under this Article.
(3) "Corporation" shall mean a corporation formed under this Article.
(4) "Federal agency" shall mean and include the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.
(5) "Law" shall mean any act or statute, general, special or local of this State.
(6) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic. (1935, c. 291, s. 2.)

CASE NOTES

Cited in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

§ 117-8. Formation in unserved communities; filing application with Rural Electrification Authority.

When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

CASE NOTES

Continued Operation After Area Becomes Integral Part of Town. — For a case involving the authority of an electric membership corporation to continue to operate in an area which was a rural area when its distribution lines were constructed but is now an integral part of a town, see Pee Dee Elec. Membership Corp. v. Carolina Power & Light Co., 253 N.C. 610, 117 S.E.2d 764 (1961).

Cited in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

§ 117-9. Issuance of privilege for formation of such corporation.

Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

CASE NOTES

Cited in Pee Dee Elec. Membership Corp. v. Carolina Power & Light Co., 253 N.C. 610, 117 S.E.2d 764 (1961).

§ 117-10. Formation authorized.

Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

Cited in State ex rel. North Carolina Util. Comm'n v. Municipal Corps., 243 N.C. 193, 90 S.E.2d 519 (1955); Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961); Pee Dee Elec. Membership Corp. v. Carolina Power & Light Co., 253 N.C. 610, 117 S.E.2d 764 (1961); Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-10.1. Municipal franchises.

An electric membership corporation shall be eligible to receive a franchise pursuant to G.S. 160-2(6) from any city or town:

(1) In which such electric membership corporation is on April 20, 1965 furnishing electric service at retail to a majority of the electric meters; or

(2) To which such electric membership corporation is on April 20, 1965 furnishing the entire supply of electricity at wholesale; or

(3) Which is newly incorporated subsequent to April 20, 1965, and in which on the effective date of such incorporation the electric membership corporation is furnishing electric service at retail to a majority of the meters. (1965, c. 287, s. 9.)

Editor's Note. — Section 160-2(6), referred to in the introductory language of this section, was repealed by Session Laws 1971, c. 698, s. 2. For present statutory provisions relating to general powers of municipal corporations, see Article 2 of Chapter 160A, G.S. 160A-11 et seq.

§ 117-10.2. Restriction on municipal service.

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.2, 160A-332, and 160A-333. In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing. (1965, c. 287, s. 10; 1997-346, s. 3; 1999-111, s. 1; 2005-150, s. 6; 2007-419, s. 2.)

Editor's Note. — Session Laws 1997-346, s. 6, as amended by Session Laws 1999-111, s. 1, provides that "this act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on December 31, 2003." Session Laws 2003-24, s. 1, repealed the expiration provision.

§ 117-10.3: Repealed by Session Laws 2007-419, s. 3, effective August 21, 2007.

Editor's Note. — Session Laws 2007-419, s. 3, provides, in part: "Agreements previously entered into pursuant to G.S. 117-10.3 and G.S. 160A-331.1 shall not be affected by this repeal."

§ 117-11. Contents of certificate of incorporation.

(a) Required Provisions. — The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of ______________ Electric Membership Corporation" (the blank space being filled in with the name of the corporation), and shall state:

(1) The name of the corporation, which name shall be such as to distinguish it from any other corporation.
(2) A reasonable description of the territory in which its operations are principally to be conducted.
(3) The location of its principal office and the post-office address thereof.
(4) The maximum number of directors, not less than three.
(5) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.
(6) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.
(7) The terms and conditions upon which members of the corporation shall be admitted.

(b) Permissible Provisions. — The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the register of deeds in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7; 1967, c. 823, s. 32.)

CASE NOTES

Cited in Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

§ 117-13. Board of directors; compensation; president and secretary.

Each corporation formed under this Article shall have a board of directors, in which management of the affairs of the corporation is vested. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered-term basis: Provided, that the total number of directors on a board shall be so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors shall be entitled to receive for their services only such compensation as is provided in the bylaws. The board shall elect annually from its own number a president and a secretary. The directors must be members of the corporation, except that for those corporations whose principal purpose is to furnish bulk electric wholesale power supplies and whose membership consists of other electric membership corporations, the directors may be members, directors, officers or managers of the member corporations, and shall be elected by the member corporation's board of directors. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760; 1975, c. 314; 1979, c. 285, s. 2; 1981, c. 478.)

CASE NOTES

Diversity Among Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to present sufficient evidence of a violation of any diversity rule contained in G.S. 117-13 and G.S. 117-16. Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Power to Appoint Director. — Board of directors of a nonprofit rural electric cooperative had the power to appoint two new directors to fill vacant positions that were added to the cooperative. Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-14. Powers of board.

The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

(1) The power to adopt and amend bylaws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the bylaws. The bylaws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof.

(2) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.

(3) To execute instruments.

(4) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.

(5) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

CASE NOTES

Bad Faith on Part of Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to demonstrate bad faith on the part of the board members in exercising their powers under G.S. 117-14. Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Power to Appoint Director. — Board of directors of a nonprofit rural electric cooperative had the power to appoint two new directors to fill vacant positions that were added to the cooperative. Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-15. Certificates of membership.

A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

CASE NOTES

Cited in Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

§ 117-16. Corporate purpose; terms and conditions of membership.

The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause. With respect to the members of an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, the word "use" as used in this section shall also mean either "use and purchase" or "purchase" solely, as the case may be, and the words "supplied by" shall also mean "supplied for the account of". With respect to an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, it shall be lawful for such corporation to enter into joint arrangements with other power supply entities, including but not limited to investor-owned public utilities and bodies politic, for the purchase and sale of bulk power supplies and bulk power services and for the joint ownership of bulk power supply properties. (1935, c. 291, s. 11; 1959, c. 387, s. 2; 1979, c. 285, s. 3.)

CASE NOTES

Persons who are not members of an electric membership corporation may not maintain an action challenging the validity of acts of the director of the corporation, and the fact that such persons are eligible and might hereafter become members and maintain an action under the principle announced in Gorrell v. Greensboro Water Supply Co., 124 N.C. 328, 32 S.E. 720, 70 Am. St. R. 589, 46 L.R.A. 513 (1899), does not affect this result, since they have no rights or interest in the management of the corporation until they are members. Bailey v. Carolina Power & Light Co., 212 N.C. 768, 195 S.E. 64 (1938).

Membership is not terminated by a change in the character of the community from rural to urban. The corporation has the right and the duty to continue to serve its members. However, it is not entitled to expand its services in such an area. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 256 N.C. 62, 122 S.E.2d 782 (1961).

A member may continue to receive current though he is not a resident of the area served. The test is where the service is rendered, not the residence of the member. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 256 N.C. 62, 122 S.E.2d 782 (1961).

Pole attachment license is not a service. — By encumbering its property through pole-attachment license agreements with a cable operator, an electric membership corporation did not thereby render services, and thus the corporation did not violate the G.S. 117-16 requirement of reasonable services by its demand that the operator pay a higher annual rate for the attachment of its cable to the corporation's poles. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

Common-law duty requiring electric public utility, created pursuant to G.S. 117-16, to charge reasonable and nondiscriminatory rates for electric service did not clearly apply to pole-attachment agreements and federal court would not extend North Carolina common law to hold that it did; thus, court dismissed cable provider's declaratory judgment action against electric cooperative. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 506 F.3d 304, 2007 U.S. App. LEXIS 25425 (4th Cir. 2007).

Diversity Among Directors. — Judgment dismissing rural electric cooperative members' claims of racial discrimination against a rural electric cooperative and its board of directors was affirmed as the members failed to present sufficient evidence of a violation of any diversity rule contained in G.S. 117-13 and G.S. 117-16. Hammonds v. Lumbee River Elec. Mbrshp. Corp., 178 N.C. App. 1, 631 S.E.2d 1, 2006 N.C. App. LEXIS 1301 (2006).

Applied in Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

Cited in Pee Dee Elec. Membership Corp. v. Carolina Power & Light Co., 253 N.C. 610, 117 S.E.2d 764 (1961).

§ 117-16.1. Discrimination prohibited.

No electric membership corporation shall, as to rates or services, make or grant any unreasonable preference or advantage to any member or subject any member to any unreasonable prejudice or disadvantage. No electric membership corporation shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. No electric membership corporation shall give, pay, or receive any rebate or bonus, directly or indirectly, or mislead or deceive its members in any manner as to rates charged for the services of such electric membership corporation. (1965, c. 287, s. 11.)

CASE NOTES

Pole attachment license is not a service or a rate. — By encumbering its property through pole-attachment license agreements with a cable operator, an electric membership corporation did not thereby render services or charge a rate, and thus the corporation did not violate the G.S. 117-16.1 requirement of providing reasonable and nondiscriminatory services by its demand that the operator pay a higher annual rate for the attachment of its cable to the corporation's poles. Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

§ 117-17. General grant of powers.

Each corporation formed under this Article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in The Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

Cited in Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

§ 117-18. Specific grant of powers.

Subject only to the Constitution of the State, a corporation created under the provisions of this Article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

(1) To sue and be sued.

(2) To have a seal and alter the same at pleasure.

(3) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(4) To render service and to acquire, own, operate, maintain and improve a system or systems.

(5) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.

(6) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands that are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right-of-way, or the right of eminent domain, the rulings of the North Carolina Rural Electrification Authority are final. Notwithstanding the foregoing sentence and notwithstanding subdivision (7) of G.S. 117-2, electric membership corporations may, without necessity of the Authority's rulings or participation, exercise the right of eminent domain for the purposes of

constructing, operating and maintaining electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40A of the General Statutes; provided, that notwithstanding G.S. 117-30, the foregoing grant of the power of eminent domain to electric membership corporations shall not apply to telephone membership corporations; and, provided further, that the grant of the power of eminent domain is supplementary to the power of eminent domain already devolved upon the Authority.

(7) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.

(8) To make any and all contracts necessary or convenient for the full exercise of the powers in this Article granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.

(9) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

(10) To contract debts, borrow money, and to issue or assume the payment of bonds.

(11) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.

(12) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.

(13) To extend, construct, operate and maintain power lines into adjacent states.

(14) As to electric membership corporations, to conduct the activities permitted by G.S. 117-18.1. (1935, c. 291, s. 13; 1941, c. 335; 1975, c. 141; 1999-180, s. 1; 2001-487, s. 38(f).)

Editor's Note. — Chapter 40, referred to in subdivision (6) of this section, was repealed by Session Laws 1981, c. 919, s. 1. See now Chapter 40A.

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Legislative Purpose. — The legislature, by this section, made certain that when necessary to create membership corporations to provide citizens of rural areas with electricity, the corporations so created would not be hampered by having to obtain permission to function from some other agency. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

An electric membership corporation and a public utility corporation are free to compete in rural areas, unless restricted by the provisions of a contract between them. Pitt & Greene Elec. Membership Corp. v. Carolina Power & Light Co., 255 N.C. 258, 120 S.E.2d 749 (1961).

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

Cited in City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in the Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an

EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

§ 117-18.1. Subsidiary business activities.

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

(1) They are not financed with loans or grants from the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) or the USDA or with similar financing from any successor agency. This limitation shall not apply to RUS or USDA loans or grants, or loans or grants from successor agencies, for water or wastewater collection and treatment projects.

(2) They are subject to all taxes, specifically including federal and State income taxes, levied against business entities of the same structure and engaged in the same activities.

(3) They fully compensate the electric membership corporation for the use of personnel, services, equipment, or tangible and intangible property, the greater of (i) a competitive price, which is a price comparable with prices generally being charged at the time in arms length transactions in the same market, or (ii) the electric membership corporation's fully distributed costs, which shall include all direct and indirect costs, including cost of capital incurred in providing the personnel, services, equipment, tangible property, or intangible property in question. The value of real property shall include the intangible value of not having to purchase the real property being used, and the value of the identification with the EMC that will exist because of the use of the particular real property. Should the Utilities Commission, upon complaint showing reasonable grounds for investigation, find after investigation, that the charges for those transactions between the electric membership corporation and the other business entity do not conform with the provisions of this subdivision, the Utilities Commission is empowered to direct the electric membership corporation to adjust those charges to comply with the provisions of this subdivision. If the electric membership corporation does not comply with the Utilities Commission's directive, then the Utilities Commission is empowered to direct the electric membership corporation to divest its interest in the other business entity. For purposes of enforcing this subdivision, members of the Utilities Commission, the Utilities Commission staff, and the Public Staff are authorized to inspect the books and records of such other business entities and the electric membership corporations. The Utilities Commission shall have the authority to adopt rules and reporting requirements to enforce this subdivision. The provisions of G.S. 62-310(a), 62-311, 62-312, 62-313, 62-314, 62-315, 62-316, 62-326, and 62-327 shall apply to electric membership corporations with respect to the application of this subdivision.

(4) They are organized and operated pursuant to Chapter 55 or Chapter 57C of the General Statutes.

(5) They do not receive from an electric membership corporation any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds ten percent (10%) of the assets of that electric membership corporation.

(b) An electric membership corporation may not form or organize a separate business entity to engage in activities involving the distribution, storage, or sale of oil, as defined in G.S. 143-215.77(8), specifically including liquefied petroleum gases, but may acquire, hold, dispose of, and operate any interest in an existing business entity already engaged in these activities, subject to the other provisions of this section.

(c) No director, or spouse of a director, of an electric membership corporation may be employed or have any financial interest in any separate business entity formed, organized, acquired, held, or operated by an electric membership corporation pursuant to the provisions of this section. (1999-180, s. 2.)

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In General. — This section, as amended, permits electric membership corporations to continue present and former involvement in the sale and distribution of propane products. Springer-Eubank Co. v. Four County Elec. Membership Corp., 142 N.C. App. 496, 543 S.E.2d 197, 2001 N.C. App. LEXIS 140 (2001).

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

§ 117-19. Taxes and assessments.

(a) From and after April 20, 1965, no electric membership corporation heretofore or hereafter organized, reorganized, or domesticated under the provisions of this Chapter shall be a public agency; nor shall any such corporation be, or have the rights of, a political subdivision of the State.

(b) With respect to its properties owned and revenues received on and after January 1, 1967, each electric membership corporation operating within the State shall be subject to, and shall pay taxes and assessments under, all laws relative to State, county, municipal and other local taxes and assessments applicable to the electric light and power companies in this State, except income tax.

(c) through (e) Repealed by Session Laws 1997-6, s. 16. (1935, c. 291, s. 14; 1965, c. 287, s. 12; 1997-6, s. 16.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 481.

§ 117-20. Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

(1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, and

(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1; 1997-346, s. 4; 1999-111, s. 1.)

Editor's Note. — Session Laws 1997-346, s. 6, as amended by Session Laws 1999-111, s. 1, provides that "this act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on December 31, 2003." Session Laws 2003-24, s. 1, repealed the expiration provision.

CASE NOTES

Applied in Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Mbrshp. Corp., 451 F. Supp. 2d 736, 2006 U.S. Dist. LEXIS 64195 (E.D.N.C. 2006).

§ 117-21. Issuance of bonds.

A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this Article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16; 1969, c. 670, s. 2.)

§ 117-22. Covenants or agreements for security of bonds.

In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

§ 117-23. Purchase and cancellation of bonds.

A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled. (1935, c. 291, s. 18.)

§ 117-24. Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ____________" (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
(3) That the corporation elects to dissolve.
(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2; 1997-346, s. 5; 1999-111, s. 1.)

Editor's Note. — Session Laws 1997-346, s. 6, as amended by Session Laws 1999-111, s. 1, provides that "this act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on December 31, 2003." Session Laws 2003-24, s. 1, repealed the expiration provision.

CASE NOTES

Cited in NLRB v. Randolph Elec. Membership Corp., 343 F.2d 60 (4th Cir. 1965).

§ 117-25. Amendment of certificate of incorporation.

A corporation created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of ____________ Electric Membership Corporation" and state:

(1) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.
(2) The date of filing the certificate of incorporation in each public office where filed.
(3) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted.

Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

OPINIONS OF ATTORNEY GENERAL

An EMC or Its Subsidiary May Not Engage in The Retail Distribution of Propane Gas. — Neither an Electric Membership Corporation (EMC) organized under Article 2 of Chapter 117 of the General Statutes nor a North Carolina wholly-owned subsidiary of an EMC, may indirectly, by participation in a joint venture with a third party, engage in the business of the retail distribution of propane gas in North Carolina. See opinion of Attorney General to Representative David M. Miner, 1998 N.C.A.G. 55 (12/14/98).

§ 117-26. Application for grant or loan from governmental agency.

Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder. (1935, c. 291, s. 21.)

CASE NOTES

Cited in North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).

§ 117-27: Repealed by Session Laws 1965, c. 287, s. 15.

ARTICLE 3.

Miscellaneous Provisions.

§ 117-28. Foreign corporations; domestication; rights and privileges.

Any electric or telephone membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs, or an exchange interconnection, or for the purpose of supplying electric or telephone service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric or telephone membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric or telephone membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this Chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12; 1959, c. 387, s. 3.)

CASE NOTES

Cited in Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ 117-29. Assistance from Rural Electrification Authority in procuring adequate telephone service.

Any number of persons residing in any rural community who are not provided with telephone service or are inadequately provided with same, may make application to the Rural Electrification Authority, upon such form as may be provided by the Rural Electrification Authority for assistance in securing telephone service, showing the circumstances of such community or communities with regard to telephone service and the need therefor. The Rural Electrification Authority shall make an investigation of the situation with respect to telephone service in such rural community or communities and if, upon investigation, it appears that such community or communities are not served with needed telephones or are inadequately served, the facts with reference thereto shall be collected by the Rural Electrification Authority and the Rural Electrification Authority shall promptly bring these facts to the attention of any telephone company serving the area, and shall make reasonable efforts to get such telephone company to provide the needed telephone service in such community or communities. (1945, c. 853, s. 1.)

§ 117-30. Telephone membership corporations.

(a) In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section G.S. 117-29 are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under Article 2 of this Chapter, and all of the provisions of said Article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said Article; except that the provisions of G.S. 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-18.1, 117-19 and 117-24 shall not be applicable to the organization of a telephone membership corporation, and except that such corporations so formed for the express purpose of providing telephone service necessary to serve the community or communities prescribed in the application may also provide the community or communities prescribed in the application with any communication service for the transmission of voice, sounds, signals, pictures, writing or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus, together with any telecommunications service requiring band-width capacity, including, but not limited to community antenna and cable television services, and including all lines, wires, cables, radio, light, electromagnetic impulse and all facilities, systems or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of section 3(o) of the Federal Communications Act of 1934, as amended (47 USC § 153(o)) and except that such corporation so formed shall have no authority to engage in any other business. Provided, that the references in Article 2 of this Chapter to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines, broadband cables and lines, telephone service and broadband communications services. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city.

(b) Any telephone membership corporation formed under this Article which now provides or has imminent plans to provide any service which is subject to the requirement of a state or local franchise shall make reasonable efforts to secure any such state or local franchise required for the operation of such service within its service area. Unless otherwise prohibited, any such franchise granted to a telephone membership corporation may be transferred or assigned by that corporation, in its discretion, if such transfer or assignment is reasonably calculated to contribute to the development of any such service within the franchised area. Provided, however, that no telephone membership corporation shall be required to obtain a state or local franchise to provide the types of telephone services being provided on July 1, 1979 by a telephone membership corporation, or the types of telephone services offered by existing telephone membership corporations on July 1, 1979 and proposed to be offered by any telephone membership corporation formed thereafter, without respect to the facilities or methods which are used to provide such services. (1945, c. 853, s. 2; 1965, c. 345, s. 1; 1979, c. 586; 1999-180, s. 3.)

§ 117-31. Power of Rural Electrification Authority to prosecute requested investigations.

In investigating the application filed with the Rural Electrification Authority under the provisions of G.S. 117-30 of this Article, the Rural Electrification Authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call upon the Utilities Commission of the State to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this Article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service. (1945, c. 853, s. 3.)

§ 117-32. Loans from federal agencies; authority of county, etc., to engage in telephone business.

Whenever any corporation organized under the provisions of this Article desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, it shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make application for grants or loans to any such corporation. Nothing in this Article shall be deemed to authorize any county, city or town to engage in the telephone business. (1945, c. 853, s. 4.)

§ 117-33. Declared public agency of State; taxes and assessments.

A telephone membership corporation heretofore or hereafter organized under this Article shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said telephone membership corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said telephone membership corporation and is used for the purposes for which the corporation was formed. (1965, c. 345, s. 2.)

§ 117-34. Dissolution.

Any telephone membership corporation created under this Article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ________" (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
(3) That the corporation elects to dissolve.
(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1965, c. 345, s. 2; 1987, c. 448, s. 3.)

§ 117-35. Article complete in itself and controlling.

Article 4 is complete in itself and shall be controlling. The provisions of any other law, general, special, or local except as provided in this Article, shall not apply to a telephone membership corporation formed under this Article. (1965, c. 345, s. 2.)

§§ 117-36 through 117-40: Reserved for future codification purposes.

Article 5.

Consolidation and Merger.

§ 117-41. Consolidation.

(a) Any two or more electric membership corporations or any two or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "consolidating corporation"), may consolidate into a new corporation (hereinafter designated the "new corporation"), by complying with the provisions of subsections (b) and (c) hereof and of G.S. 117-43.

(b) The proposition for the consolidation of the consolidating corporations into the new corporation and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating corporation, the notice of which shall have attached thereto a copy of the proposed articles of consolidation.

(c) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating corporation voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Chapter and shall state:

(1) The name of each consolidating corporation and the address of its principal office;
(2) The name of the new corporation and the address of its principal office;
(3) A statement that each consolidating corporation agrees to the consolidation;
(4) The names and addresses of the directors of the new corporation; and
(5) The terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating corporations may or shall become members of the new corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the new corporation. The president or vice-president of each consolidating corporation executing such articles of consolidation

shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such corporation. (1979, c. 285, s. 4.)

§ 117-42. Merger.

(a) Any one or more electric membership corporations or any one or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "merging corporation"), may merge into another like corporation (hereinafter designated the "surviving corporation"), by complying with the provision of G.S. 117-42(b) and (c), and G.S. 117-43.

(b) The proposition for the merger of the merging corporation(s) into the surviving corporation and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of such merging corporation(s) and of the surviving corporation, the notice of which shall have attached thereto a copy of the proposed articles of merger.

(c) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two thirds of those members of each corporation voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Chapter and shall state:

(1) The name of each merging corporation and the address of its principal office;

(2) The name of the surviving corporation and the address of its principal office;

(3) A statement that each merging corporation and the surviving corporation agree to the merger;

(4) The names and addresses of the directors of the surviving corporation; and

(5) The terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging corporations may or shall become members of the surviving corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the surviving corporation. The president or vice-president of each corporation executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such article were duly complied with by such corporation. (1979, c. 285, s. 4.)

§ 117-43. Filing and recording of articles of consolidation or merger.

Articles of consolidation or merger shall be filed with the Secretary of State, who shall forthwith prepare one or more certified copies thereof and forward one to the register of deeds of each county in which a portion of the territory of the filing corporation is authorized to furnish service, which registers of deeds shall forthwith file such certified copy in their respective offices and record the same as articles of incorporation are recorded. As soon as the provisions of this section have been complied with, the new consolidated corporation or the surviving merged corporation, described and named in the articles so filed, shall become and constitute a body corporate in accordance with the provisions of such articles. (1979, c. 285, s. 4.)

§ 117-44. Effect of consolidation or merger.

Upon compliance with the provisions of G.S. 117-44:

(1)a. In the case of a consolidation, the existence of the consolidating corporations shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation; and

b. In the case of a merger, the separate existence of the merging corporations shall cease and the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

(2) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating or merging corporations shall be deemed to be transferred to and vested in the new or surviving corporation without further act or deed.

(3) The new or surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging corporations and any claim existing or action or proceeding pending by or against any of the consolidating or merging corporations may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving corporation may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such consolidation or merger. (1979, c. 285, s. 4.)

§ 117-45. Validation.

No provision of Article 5 nor any provision thereof shall, or shall be construed to, express or imply the invalidity or invalidation of the incorporation or operations of any electric or telephone membership corporation heretofore organized and operating under Chapter 117 of the General Statutes, including but not limited to North Carolina Electric Membership Corporation and any two or more electric or telephone membership corporations which have substantively merged or consolidated; and any such substantive mergers or consolidations are hereby specifically validated. (1979, c. 285, s. 4.)

ARTICLE 6.

Indemnification.

§ 117-46. Indemnification of directors, officers, employees, or agents.

The powers, authority and requirements as to indemnification, payment of expenses, and purchase of liability insurance for directors, officers, employees and agents, as set out in G.S. 55A-17.1, 55A-17.2 and G.S. 55A-17.3 shall apply to and may be exercised by any corporation formed under this Chapter. The indemnification of a director, officer, employee or agent of a corporation provided by this section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director, officer, employee, or agent. (1987, c. 107, s. 1.)

Chapter 118.

Firemen's and Rescue Squad Workers' Relief and Pension Fund.

§§ 118-1 through 118-66: Recodified as Articles 84 to 88 of Chapter 58.

Editor's Note. — This Chapter has been recodified as Articles 84 to 88 of Chapter 58 under the authority of Session Laws 1987, c. 752, s. 9 and Session Laws 1987 (Reg. Sess., 1988), c. 975, s. 34.

Sections 118-18 to 118-32 had been recodified as G.S. 118-33 to 118-49 pursuant to Session Laws 1981, c. 1029, s. 1. Sections 118-52 to 118-59 had been reserved.

Chapter 118A.

Firemen's Death Benefit Act.

§§ 118A-1 through 118A-7: Repealed by Session Laws 1973, c. 970, s. 1.

Cross References. — For the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefit Act, see G.S. 143-166.1 through 143-166.7.

Chapter 118B.

Members of a Rescue Squad Death Benefit Act.

§§ 118B-1 through 118B-7: Repealed by Session Laws 1973, c. 970, s. 2.

Cross References. — For the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefit Act, see G.S. 143-166.1 through 143-166.7.

Chapter 119.

Gasoline and Oil Inspection and Regulation.

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Lubricating Oils.

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119-1. Unlawful substitution.
119-2. Brand or trade name of lubricating oil to be displayed.
119-3. Misrepresentation of brands for sale.
119-4. Misdemeanor.
119-5. Person violating or allowing employee to violate Article to forfeit $100.00.
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Article 2.

Liquid Fuels, Lubricating Oils, Greases, etc.

119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.
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119-13.1. Definitions.
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119-14. Title of Article.
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119-16 through 119-16.2. [Repealed.]
119-16.3. Certain kerosene sales prohibited.
119-17. [Repealed.]
Sec.
119-18. Inspection tax and distribution of the tax proceeds.
119-19. Authority of Secretary to cancel a license.
119-20. [Repealed.]
119-21. On failure to report, Secretary may determine tax.
119-22. [Repealed.]
119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.
119-24. [Repealed.]
119-25. Inspectors, clerks and assistants.
119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.
119-26.1. Content of motor fuels and reformulated gasoline.
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119-28. Regulations for sale of substitutes.
119-29. Rules and regulations of Board available to interested parties.
119-30. Establishment of laboratory for analysis of inspected products.
119-31. Payment for samples taken for inspection.
119-32. Powers and authority of inspectors.
119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.
119-34. Responsibility of retailers for quality of products.
119-35. Adulteration of products offered for sale.
119-36. Certified copies of official tests admissible in evidence.
119-37. Retail dealers required to keep copies of invoices and delivery tickets.
119-38. Prosecution of offenders.
119-39. Violation a misdemeanor.
119-39.1. Civil Penalties.
119-40, 119-41. [Repealed.]
119-42. Persons engaged in transporting re-

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quired to have in possession an invoice, bill of sale or bill of lading.
119-43. Display required on containers used in making deliveries.
119-44. [Repealed.]
119-45. Certain laws adopted as part of Article.
119-46. Charges for analysis of samples.
119-47. Inspection of fuels used by State.

Article 4.

Liquefied Petroleum Gases.

119-48 through 119-53. [Recodified.]

Article 5.

Liquefied Petroleum Gases.

119-54. Purpose; definitions; scope of Article.
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119-56. Registration of dealers; liability insurance or substitute required.
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119-58. Unlawful acts.
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119-60. Liquefied petroleum gas accidents; liability limitations.
119-61. Replacement data plates for liquefied petroleum gas tanks.
119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.
119-63, 119-64. [Reserved.]

Article 6.

Contract Rights Regarding Tax Reimbursement.

119-65. Timing of reimbursement payments under contract.

ARTICLE 1.

Lubricating Oils.

§ 119-1. Unlawful substitution.

It shall be unlawful for any person, firm or corporation to fill any order for lubricating oil, designated by a trademark or distinctive trade name for an automobile or other internal combustion engine with a spurious or substitute oil unless and until it is explained to the person giving the order that the oil offered is not the oil that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. (1927, c. 174, s. 1.)

§ 119-2. Brand or trade name of lubricating oil to be displayed.

It shall be unlawful for any person, firm or corporation to sell, offer for sale or delivery, or to cause or permit to be sold, offered for sale or delivery, any oil represented as lubricating oil for internal combustion engines unless there shall be firmly attached to or painted at or near the point or outlet from which said oil represented as lubricating oil for internal combustion engines is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in at all times legible letters not less than one-half inch in height comprising the brand or trade name of said lubricating oil: Provided, that if any of said lubricating oil shall have no brand or trade name, the above required sign or label shall consist of the words in letters not less than three inches high, "Lubricating Oil No Brand." (1927, c. 174, s. 2.)

§ 119-3. Misrepresentation of brands for sale.

It shall be unlawful for any person, firm or corporation to display, at the place of sale, any sign, label or other designating mark which describes any lubricating oil for internal combustion engines not actually sold or offered for sale or delivered at the location at which the sign, label or other designating mark is displayed, or to display any label upon any container which label names or describes any lubricating oil for internal combustion engines not actually contained therein, but offered for sale or sold as such: Provided, this section shall not prevent the advertising of such products when no lubricating oil is offered for sale at such place of advertisement. (1927, c. 174, s. 3.)

§ 119-4. Misdemeanor.

Any person, firm or corporation violating any of the provisions of this Article shall for each offense be deemed guilty of a Class 2 misdemeanor. (1927, c. 174, s. 4; 1993, c. 539, s. 899; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-5. Person violating or allowing employee to violate Article to forfeit $100.00.

Any person violating this Article, or any person, firm or corporation whose servant, agent or other employee violates this Article in the course of his employment shall forfeit to the manufacturer whose oil was ordered, or to the proprietor of the trademark or trade name by which the oil order was designated by the purchaser, as the case may be, one hundred dollars ($100.00) for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty against the person, firm or corporation from whom the penalty is claimed. (1927, c. 174, s. 5.)

§ 119-6. Inspection duties devolve upon Commissioner of Agriculture.

The duties of inspection required by G.S. 119-1 through 119-5 shall be performed by the Commissioner of Agriculture. (1933, c. 214, s. 9; 1949, c. 1167.)

ARTICLE 2.

Liquid Fuels, Lubricating Oils, Greases, etc.

§ 119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.

It shall be unlawful for any person, firm, copartnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

Cross References. — As to prohibition against sale of antifreeze made from certain compounds, see G.S. 66-66.

§ 119-8. Sale of fuels, etc., different from advertised name prohibited.

No person, firm, partnership, copartnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

Cross References. — As to requirement that brand name be displayed, see § 119-2.

CASE NOTES

Applied in Maxwell v. Shell E. Petro. Prods., Inc., 90 F.2d 39 (4th Cir. 1937).

§ 119-9. Imitation of standard equipment prohibited.

It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, c. 108, s. 3.)

§ 119-10. Juggling trade names, etc., prohibited.

It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trademark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark or name or other distinguishing mark. (1933, c. 108, s. 4.)

§ 119-11. Mixing different brands for sale under standard trade name prohibited.

It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name or symbol to any product or material. (1933, c. 108, s. 5.)

§ 119-12. Aiding and assisting in violation of Article prohibited.

It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or copartnership, corporation or corporations or any of their agents or employees, to aid or assist any other person in violating any of the provisions of this Article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trademark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this Article. (1933, c. 108, s. 6.)

§ 119-13. Violation made misdemeanor.

Every person, firm or firms, partnership or copartnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1933, c. 108, s. 7; 1993, c. 539, s. 900; 1994, Ex. Sess., c. 24, s. 14(c).)

ARTICLE 2A.

Regulation of Rerefined or Reprocessed Oil.

§ 119-13.1. Definitions.

As used in this Article:

(1) "Lubricating oil" means any oil classified for the use in an internal combustion engine, hydraulic system, gear box, differential, or wheel bearings.

(1a) "Recycled oil" means any oil prepared from used oil for energy recovery or reuse as a petroleum product by reclaiming, reprocessing, rerefining, or other means that use properly treated used oil as a substitute for petroleum products.

(1b) "Rerefined oil" means used oil that is refined to remove the physical and chemical contaminants acquired through use and that, by itself or when blended with new lubricating oil or additives, meets applicable American Petroleum Institute (A.P.I.) service classifications.

(2) "Specifications" means the minimum chemical properties or analysis as determined by the American Society for Testing Materials (A.S.T.M.) test methods using current ASTM analytical procedures.

(3) "Used oil" means any oil that has been refined from crude or synthetic oil and, as a result of use, storage, or handling becomes unsuitable for its original purpose due to the loss of its original properties or the presence of impurities, but that may be rerefined for further use. (1953, c. 1137; 1979, c. 158, s. 1; 1995, c. 516, s. 1.)

Editor's Note. — The definitions in this section were placed in alphabetical order at the direction of the Revisor of Statutes.

CASE NOTES

Cited in Royal Oil Corp. v. FTC, 262 F.2d 741 (4th Cir. 1959).

§ 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.

(a) It shall be unlawful to offer for sale or sell or deliver in this State previously used oil that has not been rerefined or recycled oil that has not been rerefined, as defined in G.S. 119-13.1, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words "made from previously used lubricating oil"; the name and address of the person, firm, or corporation that has rerefined or reprocessed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity grade; the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture and Consumer Services; and that the oil in each container shall meet the minimum specifications. The Gasoline and Oil Inspection Board shall adopt minimum quality specifications, the measurement of which shall be accomplished using current A.S.T.M. analytical procedures.

(b) A person may represent a product made in whole or in part from rerefined oil to be substantially equivalent to a product made from virgin oil for a particular end use if the product conforms with the applicable American Petroleum Institute (A.P.I.) service classifications. (1953, c. 1137; 1979, c. 158, s. 2; 1995, c. 516, s. 2; 1997-261, s. 109.)

CASE NOTES

Order of Federal Trade Commission Not in Conflict with This Section. — This section requires that containers of reclaimed used oil be clearly marked "Reprocessed Oil." It does not prohibit the use of additional descriptive words, and where the Federal Trade Commission indicated that it was not the use of the word "reprocessed" which it considered deceptive, but rather the failure to make the additional specific disclosure that the reprocessed oil had been previously used, an order of the Commission prohibiting sale of the oil without disclosing its previous use was clearly not in conflict with the State's requirement. Royal Oil Corp. v. FTC, 262 F.2d 741 (4th Cir. 1959).

§ 119-13.3. Violation a misdemeanor.

Any person, firm, or corporation violating any of the provisions of this Article shall for each offense be guilty of a Class 1 misdemeanor. For a second or subsequent offense, the person shall also be enjoined from selling or distributing previously used oil for not less than one year nor more than five years. (1953, c. 1137; 1993, c. 539, s. 901; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 516, s. 3.)

CASE NOTES

Cited in Royal Oil Corp. v. FTC, 262 F.2d 741 (4th Cir. 1959).

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-14. Title of Article.

This Article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

Cross References. — As to distribution of fuels that are a blend of petroleum and ethanol, see G.S. 143-143.6.

§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. — Defined in G.S. 105-449.130.
(2) Aviation gasoline. — Defined in G.S. 105-449.60.
(3) Dyed diesel fuel. — Defined in G.S. 105-449.60.
(4) Dyed diesel fuel distributor. — A person who acquires dyed diesel fuel from either of the following:
  a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.
  b. Another dyed diesel fuel distributor.
(5) Gasoline. — Defined in G.S. 105-449.60.
(6) Jet fuel. — Defined in G.S. 105-449.60.
(7) Kerosene. — Defined in G.S. 105-449.60.
(8) Kerosene distributor. — A person who acquires kerosene from any of the following for subsequent sale:
  a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
  b. A kerosene supplier.
  c. Another kerosene distributor.
(9) Kerosene supplier. — Either of the following:
  a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
  b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.
(10) Motor fuel. — Defined in G.S. 105-449.60.
(11) Person. — Defined in G.S. 105-229.90.
(12) Terminal. — Defined in G.S. 105-449.60.
(13) Terminal operator. — Defined in G.S. 105-449.60. (1937, c. 425, s. 2; 1995, c. 390, s. 19; 1995 (Reg. Sess., 1996), c. 647, s. 53; 1997-6, s. 17; 2003-349, s. 10.12; 2005-435, s. 19; 2008-134, s. 59.)

Editor's Note. — The subdivision designations (3a) and (3b) were assigned by the Revisor of Statutes, those definitions having been enacted as subdivisions (4) and (5), respectively.

Subdivision (1a), defining "dyed diesel fuel" and subdivision (1b), defining "dyed diesel fuel distributor" were designated as such at the direction of the Revisor of Statutes, the designations in Session Laws 2005-435, s. 19, having been (1b) and (1a), respectively.

Effect of Amendments. — Session Laws 2008-134, s. 59, effective January 1, 2009, added subdivisions (2) and (6); redesignated remaining subsections to order them numerically; and in subdivision (7), substituted "Defined in G.S. 105-449.60" for "Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board."

§ 119-15.1. List of persons who must have a license.

(a) License. — A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.
(2) A kerosene distributor.
(3) A kerosene terminal operator.
(4) A dyed diesel fuel distributor.

(b) Exception. — A kerosene supplier license is not required if the supplier is licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene license. A kerosene terminal operator license is not required if the terminal operator is licensed as a terminal operator under Part 2 of Article 36C of Chapter 105 of the General Statutes. (2003-349, s. 10.14; 2004-170, s. 33; 2004-203, s. 82; 2005-435, s. 20.)

§ 119-15.2. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b) and (c). (2003-349, s. 10.14; 2004-203, s. 82.)

§ 119-15.3. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

(a) Initial Bond. — An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000).

(b) Adjustments to Bond. — When notified by the Secretary of Revenue, a person that has filed a bond or irrevocable letter of credit and that holds a license listed in this Article must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and the additional bond or irrevocable letter of credit by the license holder, however, may not exceed the limits set in subsection (a) of this section.

(c) Class 1. — A person who fails to comply with this section is guilty of a Class 1 misdemeanor. (2003-349, s. 10.14; 2004-203, s. 82; 2005-435, s. 21.)

§§ 119-16, 119-16.1: Repealed by Session Laws 1995, c. 390, ss. 20 and 21.

§ 119-16.2: Repealed by Session Laws 2003-349, s. 10.13, effective January 1, 2004.

§ 119-16.3. Certain kerosene sales prohibited.

It shall be a Class 1 misdemeanor for any distributor to sell kerosene dispensed from a pump located on the same island where there are pumps dispensing gasoline or gasohol. An island is a group of two or more dispensing pumps within 15 feet of each other. This section shall apply only to pumps installed after October 1, 1985. (1985, c. 314; 1993, c. 539, s. 903; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-17: Repealed by Session Laws 2007-527, s. 20, effective August 31, 2007.

§ 119-18. Inspection tax and distribution of the tax proceeds.

(a) Tax. — An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue on the date the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue on the date the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the date a monthly return is due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90. The inspection tax on jet fuel and aviation gasoline is payable as specified by the Secretary of Revenue.

(1) Motor fuel.
(2) Alternative fuel used to operate a highway vehicle.
(3) Kerosene.
(4) Jet fuel.
(5) Aviation gasoline.

(a1) Deferred Payment. — A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Proceeds. — The proceeds of the inspection tax levied by this section shall be applied first to the costs of administering this Article and Subchapter V of Chapter 105 of the General Statutes. The remainder of the proceeds shall be credited on a monthly basis to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is at least five million dollars ($5,000,000), one-half of the remainder of the proceeds shall be credited to the Noncommercial Fund and one-half of the remainder of the proceeds shall be credited to the Commercial Fund. If the amount of revenue in the Noncommercial Fund at the end of a month is less than this threshold amount, all of the remainder of the proceeds shall be credited to the Noncommercial Fund.

(c) No Local Tax. — No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene and motor fuel. (1917, c. 166, s. 4; C.S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1985, c. 602, s. 2; 1991, c. 636, s. 12; 1991 (Reg. Sess., 1992), c. 913, s. 12; 1993, c. 402, s. 8; 1995, c. 390, s. 23; 1995 (Reg. Sess., 1996), c. 647, s. 55; 2003-349, ss. 10.15, 10.16; 2006-162, s. 15(e); 2008-134, s. 60.)

Editor's Note. — Session Laws 2006-162, s. 33, provides, in part, that: "An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007."

Effect of Amendments. — Session Laws 2008-134, s. 60, effective January 1, 2009, in subsection (a), substituted "on the date" for "at the same time that" twice, substituted "on the date a monthly" for "on the same date as a monthly" in the fifth sentence, added the last sentence of the first paragraph; and added subdivisions (4) and (5).

§ 119-19. Authority of Secretary to cancel a license.

The Secretary of Revenue may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel a license issued under this Article or under Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond. (1933, c. 544, s. 10; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1995, c. 390, s. 24; 2004-170, s. 34.)

§ 119-20: Repealed by Session Laws 1963, c. 1169, s. 6.

Cross References. — As to administrative, penalty and remedy provisions applicable to inspection fees levied under this Chapter, see G.S. 105-269.3.

§ 119-21. On failure to report, Secretary may determine tax.

Whenever any person shall neglect or refuse to make and file any report as required by this Article, or shall file an incorrect or fraudulent report, the Secretary of Revenue shall determine after an investigation the number of gallons of kerosene oil and other motor fuel with respect to which the person has incurred liability under the tax laws of the State of North Carolina, and shall fix the amount of the taxes and penalties payable by the person under this Article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the Secretary of Revenue of the amount of tax due, and/or interest and/or penalties due to the State, shall constitute prima facie evidence of the claim of the State; and the burden of proof shall be upon the person to show that the assessment was incorrect and contrary to law; and the Secretary of Revenue may institute action therefor in the Superior Court of Wake County, regardless of the residence of such person or the place where the default occurred. (1933, c. 544, s. 12; 1973, c. 476, s. 193.)

§ 119-22: Repealed by Session Laws 1995, c. 390, s. 25.

§ 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.

Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. Except as provided in G.S. 119-26.1(c) and G.S. 119-39.1, all moneys received under the authority of this Article shall be paid into the State treasury and the State Treasurer shall place to the credit of the "State Highway Fund" that proportion of said funds representing inspection fees collected on highway use motor fuels, as certified monthly to the State Treasurer by the Secretary of Revenue, and the remainder of said funds shall be credited to the general fund. (1937, c. 425, s. 6; 1941, c. 36; 1949, c. 1167; 1963, c. 245; 1973, c. 476, s. 193; 1998-215, s. 23(b).)

Editor's Note. — Section 119-26.1(c), referred to in this section above, was recodified as G.S. 119-26.1.

§ 119-24: Repealed by Session Laws 1991, c. 10, s. 3.

Cross References. — As to preparation of reports concerning taxes by the Secretary of Revenue, see now G.S. 105-256.

§ 119-25. Inspectors, clerks and assistants.

The Secretary of Revenue and the Commissioner of Agriculture, respectively, shall appoint and employ such number of inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the gasoline and oil inspection law with the administration or enforcement of which each said Commissioner [or Secretary] is charged. All inspectors shall be bonded in the sum of one thousand dollars ($1,000) in the usual manner provided for the bonding of State employees, and the expense of such bonding shall be paid from the Gasoline and Oil Inspection Fund created by this Article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a Class 1 misdemeanor. (1937, c. 425, s. 8; 1949, c. 1167; 1973, c. 476, s. 193; 1993, c. 539, s. 904; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.

In order to more fully carry out the provisions of this Article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the

Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the amount provided by G.S. 138-5 for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents (5¢) a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this Article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, however, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this Article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G.S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961; 1969, c. 445, s. 2.)

Editor's Note. — Section 66-52, referred to in this section, was repealed by Session Laws 1975, c. 172.

State Government Reorganization. — The Gasoline and Oil Inspection Board was transferred to the Department of Agriculture by G.S. 143A-62, enacted by Session Laws 1971, c. 864.

§ 119-26.1. Content of motor fuels and reformulated gasoline.

(a) Rules adopted pursuant to G.S. 143-215.107(a)(9) to regulate the content of motor fuels or to require the use of reformulated gasoline shall be implemented by the Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board. Such rules shall be implemented within any area specified by the Environmental Management Commission when the Commission certifies to the Commissioner of Agriculture that implementation:

(1) Will improve the ambient air quality within the specified county or counties;

(2) Is necessary to achieve attainment or preclude violations of the National Ambient Air Quality Standards; or

(3) Is otherwise necessary to meet federal requirements.

(b) The Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board may adopt rules to implement this section. Rules shall be consistent with the implementation schedule and rules adopted by the Environmental Management Commission.

(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

(c1) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) The Commissioner of Agriculture may delegate his powers and duties under this subsection to the Director of the Standards Division of the Department of Agriculture and Consumer Services. (1991 (Reg. Sess., 1992), c. 889, s. 4; 1997-261, s. 83; 1998-215, s. 23(a); 1999-328, s. 2.3.)

Editor's Note. — Session Laws 1999-328, s. 5.1, provides that this act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Session Laws 1999-328, s. 5.3, contains a severability clause.

§ 119-26.2. Sulfur content standards.

(a) No person shall manufacture, sell, or offer for sale gasoline that contains a concentration of sulfur greater than 30 parts per million except that a person may manufacture, sell, or offer for sale gasoline that contains a concentration of sulfur of not more than 80 parts per million if the average concentration of sulfur in the gasoline manufactured, sold, or offered for sale by that person is 30 parts per million or less. The average concentration of sulfur contained in gasoline shall be determined on the basis of a one-year period established by rule.

(a1) Gasoline that meets the requirements of Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements as set out in 65 Federal Register No. 28 (10 February 2000) pages 6698 through 6870, as codified in 40 Code of Federal Regulations Parts 80, 85, and 96 (1 July 2001 Edition), shall be deemed to comply with the requirements of this section.

(b) The Gasoline and Oil Inspection Board shall adopt rules to implement this section. (1999-328, s. 2.1; 2002-75, s. 2; 2005-196, s. 1)

Editor's Note. — Session Laws 1999-328, s. 5.1, provides that this act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Session Laws 1999-328, s. 5.3, contains a severability clause.

Session Laws 2002-75, s. 3, provides that s. 2 of the act is effective August 15, 2002, and expires January 1, 2006.

Session Laws 2005-196, s. 1, amended Session Laws 2002-75, s. 3, by deleting the expiration date, and thereby making s. 2 permanent.

Session Laws 2002-75, s. 2, has been codified as G.S. 119-26.2(a1) at the direction of the Revisor of Statutes.

§ 119-26.3. MTBE in motor fuels prohibited.

(a) Definitions. — As used in this section:

(1) "Motor fuel" has the same meaning as in G.S. 105-449.60.

(2) "MTBE" means the fuel additive methyl tertiary butyl ether.

(b) Prohibition; De Minimis Exception. — No person shall knowingly add MTBE to any motor fuel manufactured, distributed, stored, sold, or offered for sale in this State. No person shall manufacture, distribute, store, sell, or offer for sale motor fuel that contains a concentration of MTBE of more than one-half of one percent (0.5%) by volume in this State. The presence of MTBE in a motor fuel caused solely by incidental commingling of the motor fuel with other motor fuel that contains MTBE during transfer or storage of the motor fuel does not constitute a violation of this section.

(c) Transportation Through State Not Prohibited. — This section shall not be construed to prohibit the transport of motor fuel containing MTBE through this State.

(d) Rules. — The Gasoline and Oil Inspection Board shall adopt rules to implement this section. (2005-93, s. 1.)

Editor's Note. — Session Laws 2005-93, s. 5, made this section effective January 1, 2008.

Subdivision (a)(1), defining "motor fuel" and subdivision (a)(2), defining "MTBE" were designated as such at the direction of the Revisor of Statutes, the designations in Session Laws 2005-93, s. 1, having been (a)(2) and (a)(1), respectively.

Session Laws 2005-93, s. 2, provides: "The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly study the feasibility and advantages of a coordinated regional approach for the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region of the United States. The study shall consider the potential impacts on fuel supply and availability and the potential benefits and costs associated with the use of MTBE. In the course of the study, the Secretary and the Commissioner shall consult with the following:

"(1) Other southeastern states, including Alabama, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, and Virginia.

"(2) Refiners, suppliers, distributors, transporters, and retailers of motor fuel and liquid fuel pipeline operators.

"(3) Consumer, environmental, and other public interest groups.

"(4) The United States Environmental Protection Agency and other relevant governmental agencies."

Session Laws 2005-93, s. 3, provides: "The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall work cooperatively with other southeastern states to develop and implement a coordinated approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region consistent with G.S. 119-26.3, as enacted by Section 1 of this act."

Session Laws 2005-93, s. 4, provides: "The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly report on the results of the study required by Section 2 of this act and on progress in developing a coordinated regional approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel pursuant to Section 3 of this act to the Environmental Review Commission. The Secretary and Commissioner shall submit an interim report on or before 1 March 2006 and a final report, including any findings and recommendations, on or before 1 March 2007."

§ 119-27. Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.

In the event that the Gasoline and Oil Inspection Board shall adopt standards for grades of gasoline, at all times there shall be firmly attached to or painted on each dispensing pump or other dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina ______ grade. Any person, firm, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a Class 2 misdemeanor, and the gasoline offered or exposed for sale shall be confiscated.

The gasoline and oil inspectors shall have the authority to immediately seize and seal, to prevent further sales, any dispensing pump or other dispensing device from which gasoline is offered or exposed for sale in violation of or without complying with the provisions of this Article. Provided, however, that this section shall not be construed to permit the destruction of any gasoline which may be blended or rerefined or offered for sale as complying with the legal specifications of a lower grade except under order of the court in which an indictment is brought for violation of the provisions of this Article. Provided, further, that gasoline that has been confiscated and sealed by the gasoline and oil inspectors for violation of the provisions of this Article shall not be offered or exposed for sale until the Director of the Gasoline and Oil Inspection Division has been fully satisfied that the gasoline offered or exposed for sale has been blended or rerefined or properly labeled to meet the requirements of this Article and the owners of said gasoline have been notified in writing of this fact by said Director and, provided, further, that the permitting of blending, rerefining or properly labeling of confiscated gasoline shall not be construed to in any manner affect any indictment which may be brought for violation of this section. (1937, c. 425, s. 11; 1939, c. 276, s. 1; 1941, c. 220; 1993, c. 539, s. 905; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to distribution of fuels that are a blend of petroleum and ethanol, see G.S. 143-143.6.

§ 119-27.1. Self-service gasoline pumps; display of owner's or operator's name, address and telephone number.

(a) Every owner of, or other person in control of, a self-service gas pump or station whose equipment permits purchase and physical transfer of gasoline or oil products by insertion of money into some device or machine without the necessity of personal service by the owner or his agent shall clearly affix a sticker to each pump showing his name, address, and telephone number.

(b) The North Carolina Department of Agriculture and Consumer Services shall have the responsibility for the enforcement of this section. (1973, c. 1324, s. 1; 1997-261, s. 84.)

§ 119-28. Regulations for sale of substitutes.

All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the Commissioner of Agriculture for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said Commissioner of Agriculture in writing. (1937, c. 425, s. 12; 1949, c. 1167.)

§ 119-29. Rules and regulations of Board available to interested parties.

It shall be the duty of the Commissioner of Agriculture to make available for all interested parties the rules and regulations adopted by the Gasoline and Oil Inspection Board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13; 1949, c. 1167.)

§ 119-30. Establishment of laboratory for analysis of inspected products.

The Commissioner of Agriculture is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the Gasoline and Oil Inspection Division for the analysis of inspected products. (1937, c. 425, s. 14; 1949, c. 1167.)

§ 119-31. Payment for samples taken for inspection.

The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the Commissioner of Agriculture showing that payment has been made as requested. (1937, c. 425, s. 15; 1949, c. 1167.)

§ 119-32. Powers and authority of inspectors.

The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the State, including the authority to arrest, with or without warrants, and take offenders before the several courts of the State for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this Article or the rules, regulations or requirements of the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of 100 gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this State, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a Class 1 misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16; 1949, c. 1167; 1993, c. 539, s. 906; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.

The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of the Commissioner of Agriculture, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, insofar as the same may be necessary to effectuate the provisions of this Article. The rules, regulations, specifications and tolerance limits as promulgated by the National Conference of Weights and Measures, and recommended by the United States Bureau of Standards, shall be observed by said inspectors insofar as they apply to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the State shall have the same power and authority given by this section to inspectors under the supervision of the Commissioner of Agriculture. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the Commissioner of Agriculture. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within 10 days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this Article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a Class 2 misdemeanor. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a Class 2 misdemeanor. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a Class 1 misdemeanor. (1937, c. 425, s. 17; 1949, c. 1167; 1993, c. 539, s. 907; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-34. Responsibility of retailers for quality of products.

The retail dealer shall be held responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the Commissioner of Agriculture at the time of delivery, and in the presence of the distributor or his agent, show that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18; 1949, c. 1167.)

CASE NOTES

This section has no application to one who is not a retail dealer. Stegall v. Catawba Oil Co., 260 N.C. 459, 133 S.E.2d 138 (1963).

§ 119-35. Adulteration of products offered for sale.

It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in anywise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor. (1937, c. 425, s. 19; 1993, c. 539, s. 908; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-36. Certified copies of official tests admissible in evidence.

A certified copy of the official test of the analysis of any petroleum product, under the seal of the Commissioner of Agriculture, shall be admissible as evidence of the fact therein stated in any of the courts of this State on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20; 1949, c. 1167.)

§ 119-37. Retail dealers required to keep copies of invoices and delivery tickets.

Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ 119-38. Prosecution of offenders.

All prosecutions for fines and penalties under the provisions of this Article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ 119-39. Violation a misdemeanor.

Unless another penalty is provided in this Article, any person violating any of the provisions of this Article or any of the rules and regulations of the Secretary of Revenue or the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board shall be guilty of a Class 1 misdemeanor. (1937, c. 425, s. 23; 1949, c. 1167; 1973, c. 476, s. 193; 1993, c. 539, s. 909; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 119-39.1. Civil Penalties.

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 4; 1998-215, s. 24.)

§§ 119-40, 119-41: Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 56.

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.

Every person hauling, transporting or conveying into, out of, or between points in this State any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this State over either the public highways or waterways of this State, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the Commissioner of Agriculture, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the Commissioner of Agriculture shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this State such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the State: Provided, however, that this Article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply tank shall have a capacity of more than 100 gallons: And, provided further, that this section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. (1937, c. 425, s. 25; 1939, c. 276, s. 3; 1949, c. 1167.)

§ 119-43. Display required on containers used in making deliveries.

Every person delivering at wholesale or retail any gasoline in this State shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquid is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire." (1937, c. 425, s. 26; 1939, c. 276, s. 4; 1949, c. 1167.)

CASE NOTES

Purpose. — The safety provisions requiring that gasoline be sold only in approved and labeled containers were enacted to prevent various injuries possible from the improper storage of a highly flammable and dangerous material. Al-Hourani v. Ashley, 126 N.C. App. 519, 485 S.E.2d 887 (1997).

Criminal activity is not the type of harm that the safety provisions were designed to protect against. Al-Hourani v. Ashley, 126 N.C. App. 519, 485 S.E.2d 887 (1997).

Violation of this section is a misdemeanor. Reynolds v. Murph, 241 N.C. 60, 84 S.E.2d 273 (1954).

And is negligence per se. Reynolds v. Murph, 241 N.C. 60, 84 S.E.2d 273 (1954).

Violation of a statute relating to the storage, handling and distribution of gasoline is negligence per se. Byers v. Standard Concrete Prods. Co., 268 N.C. 518, 151 S.E.2d 38 (1966).

A violation of this section is negligence per se. Amjad Al-Hourani v. Ashley, 126 N.C. App. 519, 485 S.E.2d 887 (1997).

Allegations held sufficient to allege concurrent negligence of defendants in failing to label jug of gasoline. Reynolds v. Murph, 241 N.C. 60, 84 S.E.2d 273 (1954).

Section Not Applicable. — There was no causal connection between defendants' alleged selling gasoline into an antifreeze container in violation of this section and the criminal acts of dousing and burning plaintiff's brother by others as criminal activity is not the type of harm that the safety provisions were designed to protect against. Amjad Al-Hourani v. Ashley, 126 N.C. App. 519, 485 S.E.2d 887 (1997).

§ 119-44: Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 56.

§ 119-45. Certain laws adopted as part of Article.

General Statutes 119-1 through 119-5 and G.S. 119-7 through 119-13 are hereby made a part of this Article. (1937, c. 425, s. 28.)

§ 119-46. Charges for analysis of samples.

The Secretary of Revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the

Gasoline and Oil Inspection Division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this Article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, State or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the State treasury to the credit of the Gasoline and Oil Inspection Fund. (1937, c. 425, s. 29; 1973, c. 476, s. 193.)

§ 119-47. Inspection of fuels used by State.

The Gasoline and Oil Inspection Division is hereby authorized, upon request of the proper State authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the State of North Carolina for the use of all departments and institutions. (1937, c. 153.)

Article 4.

Liquefied Petroleum Gases.

§§ 119-48 through 119-53: Recodified as §§ 119-54 to 119-59.

Editor's Note. — This Article was rewritten by Session Laws 1981, c. 486, s. 1, effective July 1, 1981, and has been recodified as Article 5 of this Chapter.

Article 5.

Liquefied Petroleum Gases.

§ 119-54. Purpose; definitions; scope of Article.

(a) It is the purpose of this Article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gases and to provide for the administration and enforcement of the code and such rules and regulations thereby adopted. Words used in this Article shall be defined as follows:

(1) "Board" means the North Carolina Board of Agriculture.

(2) "Commissioner" means the Commissioner of Agriculture or his designated agent.

(3) "Dealer" means any person, firm, or corporation who is engaged in or desires to engage in:

  a. The business of selling or otherwise dealing in liquefied petroleum gases which require handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

  b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances which use liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or his employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.

(4) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of

the same: propane, propylene, butanes (normal butanes or isobutane), butylenes.

(b) This Article does not apply to the design, construction, location, installation, or operation of equipment or facilities covered by the Building Code pursuant to Article 9 of Chapter 143 of the General Statutes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072; 1981, c. 486, s. 1; 1989, c. 25, s. 1.)

Editor's Note. — This Article is Article 4 of this Chapter as rewritten by Session Laws 1981, c. 486, s. 1, effective July 1, 1981, and recodified. Where appropriate, the historical citations to the sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

§ 119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.

The Board shall have the power and authority to set minimum standards and promulgate rules and regulations for the design, construction, location, installation, and operation of equipment and facilities used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gas.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas which conforms with the regulations adopted by the Board, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the Board in the enforcement of this Article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133; 1975, c. 610, s. 1; 1977, c. 410; 1981, c. 486, s. 1.)

CASE NOTES

Contributory Negligence. — Violation of former G.S. 119-49, relating to the adoption of standards, by the driver of a truck transporting liquid petroleum gas could not be asserted as contributory negligence on the part of such driver in his action to recover for burns received in a collision where defendants did not plead violation of the statute or the applicable safety regulations. Rodgers v. Thompson, 256 N.C. 265, 123 S.E.2d 785 (1962).

§ 119-56. Registration of dealers; liability insurance or substitute required.

A person shall not hold himself out or commence operation as a dealer without first having registered as provided in this section. A dealer shall register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business of such dealer, and such other pertinent information as the Commissioner may deem necessary. Verification of the insurance coverage required by this section or of proof of alternative means of financial responsibility permitted by this section shall be submitted to the Commissioner as a condition of the issuance of any registration or renewal of such registration.

There shall be two classes of dealers:

(1) A Class A dealer is one who engages in the transportation of liquefied petroleum gas.

(2) A Class B dealer is one who does not engage in the transportation of liquefied petroleum gas.

A Class A dealer shall obtain and maintain general liability insurance, including product liability, of one million dollars ($1,000,000) and motor vehicle liability insurance of one million dollars ($1,000,000) combined single limit. A Class B dealer shall obtain and maintain general liability insurance, including product liability, of one hundred thousand dollars ($100,000). Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. The Commissioner may from time to time request in writing that a dealer provide within 10 days of such request verification of said insurance coverage or proof of alternative means of financial responsibility. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling or transportation of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 453; 2009-386, s. 1.)

Effect of Amendments. — Session Laws 2009-386, s. 1, effective October 1, 2009, in the first paragraph, in the first sentence, inserted "or commence operation" near the beginning, and substituted "provided in this section" for "herein provided" at the end, in the second sentence, deleted "annually on or before January 1 of each year" preceding "register with", in the third sentence, inserted "of" preceding "such dealer", and added the last sentence, added the present second paragraph, rewrote the third paragraph, and in the last paragraph, inserted "or transportation" near the end.

§ 119-57. Administration of Article; rules and regulations given force and effect of law.

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to conduct inspections of liquefied petroleum gas containers and installations; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 2009-386, s. 2.)

Effect of Amendments. — Session Laws 2009-386, s. 2, effective October 1, 2009, inserted "to conduct inspections of liquefied petroleum gas containers and installations."

§ 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

(1) Sell any liquefied petroleum gas burning appliance designed or built for domestic use that has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Building Code Council.

(2) Repealed by Session Laws 1999-344, s. 1, effective July 22, 1999, and applicable to liquefied petroleum gas burning appliances installed on and after that date.

(3) Repealed by Session Laws 1999-344, s. 1, effective July 22, 1999, and applicable to liquefied petroleum gas burning appliances installed on and after that date.

(4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, the

tank or container may be filled by weight if the tank or container is weighed before and after filling.

(5) Disconnect an appliance from a gas supply line without capping or plugging the line before leaving the premises.

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets.

(7) Violate any provisions of this Article or any rules adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label, or other marking that includes the name of the person supplying liquefied petroleum gas to the system, and it shall be unlawful for any person, other than the supplier or the owner of the system, to disconnect, interrupt or fill the system with liquefied petroleum gas without the consent of the supplier. If another registered supplier is requested by the consumer to connect service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave the equipment in a condition consistent with this Article and the rules adopted pursuant to this Article. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 282, s. 17; 1999-344, s. 1.)

§ 119-59. Sanctions for violations.

(a) Criminal. — A dealer who violates a provision of this Article or a rule adopted under it is guilty of a Class 1 misdemeanor.

(b) Injunction. — The Commissioner or an agent of the Commissioner may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or a rule adopted under it.

(c) Civil Penalty. — The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed three hundred dollars ($300.00) for the first violation, five hundred dollars ($500.00) for a second violation, and one thousand dollars ($1,000) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Registration. — The Commissioner may deny, suspend, or revoke the registration of a dealer who violates a provision of this Article or a rule adopted under it. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 1993, c. 356, s. 2; c. 539, s. 911; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 25; 2009-386, s. 3.)

Effect of Amendments. — Session Laws 2009-386, s. 3, effective October 1, 2009, in subsection (c), in the second sentence, substituted "three hundred dollars ($300.00) for the first violation, five hundred dollars ($500.00) for a second violation, and one thousand dollars ($1,000)" for "one hundred dollars ($100.00) for the first violation, three hundred dollars ($300.00) for a second violation, and five hundred dollars ($500.00)", and deleted the former fourth sentence, which read: "The Commissioner may not assess a civil penalty against a person until the Commissioner has notified the person of the alleged violation and has given the person at least 45 days to correct or cease the alleged violation. A notice may be served by any means authorized by G.S. 1A-1, Rule 4."

§ 119-60. Liquefied petroleum gas accidents; liability limitations.

Any person who provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance unless such acts or omissions amount to willful or wanton negligence or intentional wrongdoing. Nothing in this section shall be deemed or construed to relieve any person from liability for civil damages (a) where the accident or emergency referred to above involved his own facilities or equipment or (b) resulting from any act of commission or omission on his part in the course of providing care or assistance in the normal and ordinary course of conducting his own business or profession, nor shall this section be construed to relieve from liability for civil damages any other tortfeasor not referred to herein. When the assistance takes the form of rendering first aid or emergency health care treatment, questions of liability shall be governed by G.S. 90-21.14. (1981, c. 660.)

§ 119-61. Replacement data plates for liquefied petroleum gas tanks.

A liquefied petroleum gas tank of 120 gallons or more that is subject to the American Society of Mechanical Engineers (ASME) Code must have a data plate indicating that it was built in accordance with that Code. The Commissioner may issue a data plate to replace a rusting or partially detached data plate on a liquefied petroleum gas tank. The Commissioner shall charge a person to whom a replacement data plate is issued a fee of twenty dollars ($20.00) for the plate. Fees collected under this section shall be credited to the Department of Agriculture and Consumer Services and applied to the cost of issuing replacement data plates. (1993, c. 356, s. 1; 1997-261, s. 109; 2009-386, s. 4.)

Effect of Amendments. — Session Laws 2009-386, s. 4, effective October 1, 2009, corrected a misspelling of "liquefied" throughout the section.

§ 119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.

(a) A dealer shall not be liable for any civil damages resulting from any act or failure to act if the alleged injury, damage, or loss claimed in the action was caused by any one or more of the following:

(1) The installation, alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, and the installation, alteration, modification, or repair was done without the knowledge and consent of the dealer.

(2) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner or for a purpose other than that for which the equipment or appliance was intended, and the use of the equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended took place without the knowledge and consent of the dealer.

(3) The installation of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article, and the installation of the equipment or appliance in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article took place without the knowledge and consent of the dealer.

(b) Nothing in this section alters a dealer's duty to exercise reasonable care.

(c) As used in this section, "dealer" means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer. (2007-302, s. 1.)

Editor's Note. — Session Laws 2007-302, s. 2, made this section effective October 1, 2007, and applicable to acts or omissions occurring on or after that date.

§§ 119-63, 119-64.: Reserved for future codification purposes.

ARTICLE 6.

Contract Rights Regarding Tax Reimbursement.

§ 119-65. Timing of reimbursement payments under contract.

(a) Right. — When a contract calls for one party to reimburse a second party for the federal manufacturer's excise taxes levied on petroleum products in Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, whether as a separate item or as part of the price, the party making the reimbursement has the right to choose to tender payment for the taxes no more than one business day before the day the second party is required to remit the taxes to the federal Internal Revenue Service. The party making the reimbursement has the option of exercising this right. Exercise of this right does not relieve the party of the obligation to make the reimbursement as provided for in the contract, but affects only the timing of when that reimbursement must be tendered.

(b) Procedure. — In order to exercise the contractual right established in subsection (a) of this section, the party making the reimbursement must notify the second party in writing of the intent to exercise the payment option and the effective date of the exercise. The effective date must be no earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later.

(c) Security. — If the party making the reimbursement exercises the contractual right provided in this section, the second party may require security for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The second party may not, however, change the other payment terms of the contract without a valid business reason other than the exercise of the contractual right, except to require the payment of the taxes under the contractual right to be made by electronic funds transfer. (2002-108, s. 1.)

Editor's Note. — Session Laws 2002-108, s. 18(a), made this article, as enacted by s. 1 of the act, effective September 1, 2002, and applicable to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and have no expiration date. Section 1 of the act does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. Furthermore, s. 1 of the act does not impair the obligation arising under any contract executed before September 1, 2002.

manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article, and the installation of the equipment or appliance in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article took place without the knowledge and consent of the dealer.

(b) Nothing in this section alters a dealer's duty to exercise reasonable care.

(c) As used in this section, "dealer" means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer. (2007-302, s. 1.)

Editor's Note. — Session Laws 2007-302, s. [illegible] and applicable to acts or omissions occurring on or after that date.

§§ 119-[illegible], 119-[illegible]: Reserved for future codification purposes.

Article [illegible].

Contract Rights Regarding Tax Reimbursement.

§ 119-[illegible]. Timing of reimbursement payments under contract.

(a) Right. — When a contract calls for one party to reimburse a second party for the federal manufacturer's excise taxes levied on petroleum products in Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, whether as a separate item or as part of the price, the party making the reimbursement has the right or option to tender payment for the taxes no more than one business day before the date the second party is required to remit the taxes to the federal Internal Revenue Service. The party making the reimbursement has the option of exercising this right. Exercise of this right does not relieve the party of the obligation to make the reimbursement as provided for in the contract, but affects only the timing of when that reimbursement must be tendered.

(b) Procedure. — In order to exercise the contractual right established in subsection (a) of this section, the party making the reimbursement must notify the second party in writing of the intent to exercise the payment option and the effective date of the exercise. The effective date must be no earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later.

(c) Security. — If the party making the reimbursement exercises the contractual right provided in this section, the second party may require security for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The second party may not, however, change the other payment terms of the contract without a valid business reason other than the exercise of the contractual right, except to require the payment of the taxes under the contractual right to be made by electronic funds transfer. (2003-[illegible], s. 1.)

Editor's Note. — Session Laws 2003-[illegible], made this article, as enacted by s. 1 of the act, effective [illegible] 1, 2003, and applicable to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and [illegible]

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Joint Legislative Oversight Committee on Capital Improvements.

120-258. Committee created.
120-259. Purpose and powers of the Committee.
120-260. Organization of Committee.
120-261 through 120-264. [Reserved.]

Article 30.

Joint Legislative Committee on Domestic Violence.

120-265. Creation and membership of Joint Legislative Committee on Domestic Violence.
120-266. Purposes and powers of Committee.
120-267. Organization of the Committee.
120-268, 120-269. [Reserved.]

Article 31.

Miscellaneous.

120-270. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.
120-271. Use of likenesses of any seal or coat of arms of the Senate.
120-272 through 120-274. [Reserved.]

Article 32.

Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

120-275. (Effective until June 30, 2015) Commission established.
120-276. (Effective until June 30, 2015) Membership; terms.
120-277. (Effective until June 30, 2015) Duties of the Commission.
120-278. (Effective until June 30, 2015) De-

Sec.
partment of Transportation reporting.

Sec.
120-279. (Effective until June 30, 2015) Organization of Commission.

Article 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. Senators.

(a) [For the purpose of nominating and electing members of the Senate in 2004 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each District elects one Senator, and the composition of each district is as follows:]

District 1: Beaufort County, Camden County, Currituck County, Dare County, Hyde County, Pasquotank County, Tyrrell County, Washington County.

District 2: Carteret County, Craven County, Pamlico County.

District 3: Edgecombe County, Martin County, Pitt County: Precinct Arthur: Tract 16: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1016, Block 1017; Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023; Tract 17: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077; Tract 18: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Precinct Ayden B: Tract 12: Block Group 2: Block 2006, Block 2007; Tract 14: Block Group 2: Block 2038; Block Group 3, Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4010, Block 4011; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5031, Block 5032, Block 5033; Precinct Belvoir, Precinct Bethel, Precinct Carolina, Precinct Chicod, Precinct Falkland, Precinct Fountain: Tract 19: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1018; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2048; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3033; Precinct Greenville 01, Precinct Greenville 03, Precinct Greenville 04, Precinct Greenville 05A, Precinct Greenville 05B, Precinct Greenville 06, Precinct Greenville 09: Tract 3: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1008, Block 1009, Block 1010, Block 1018, Block 1019, Block 1998, Block 1999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057; Tract 9: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2055, Block 2056, Block 2057, Block 2059, Block 2993, Block 2994, Block 2995, Block 2996; Tract 10: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4997; Precinct Greenville 12A: Tract 6: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2026; Precinct Grifton, Precinct Grimesland, Precinct Pactolus, Precinct Simpson A, Precinct Simpson B, Precinct Swift Creek.

District 4: Bertie County, Chowan County, Gates County, Halifax County, Hertford County, Northampton County, Perquimans County.

District 5: Greene County, Pitt County: Precinct Arthur: Tract 6: Block Group 2: Block 2018, Block 2021; Tract 16: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1020; Block Group 2: Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2049, Block 2050, Block 2054; Block Group 3: Block 3005, Block 3006; Precinct Ayden A, Precinct Ayden B: Tract 12: Block Group 1: Block 1033, Block 1034; Tract 14: Block Group 1: Block 1005, Block 1012, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1059, Block 1060, Block 1061, Block 1062; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2039, Block 2041; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5015, Block 5016, Block 5025, Block 5026, Block 5027, Block 5028; Precinct Farmville A, Precinct Farmville B, Precinct Fountain: Tract 18: Block Group 3: Block 3001; Tract 19: Block Group 1: Block 1044; Block Group 2: Block 2001, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2047; Block Group 3: Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Precinct Greenville 07A, Precinct Greenville 07B, Precinct Greenville 07C, Precinct Greenville 08A, Precinct Greenville 08B, Precinct Greenville 09: Tract 1: Block Group 5: Block 5024, Block 5025; Tract 2: Block Group 5: Block 5022, Block 5023, Block 5024, Block 5025; Tract 3: Block Group 1: Block 1007, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2037; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4999; Tract 4: Block Group 3: Block 3005, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Block Group 4: Block 4004, Block 4005; Precinct Greenville 10A, Precinct Greenville 10B, Precinct Greenville 11A, Precinct Greenville 11B, Precinct Greenville 12A: Tract 6: Block Group 2: Block 2019, Block 2020, Block 2022, Block 2023, Block 2024, Block 2025, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044; Tract 16: Block Group 2: Block 2035, Block 2036; Precinct Greenville 12B, Precinct Winterville Central A, Precinct Winterville Central B, Precinct Winterville East; Wayne County: Precinct 02:

Tract 2: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019; Block Group 2: Block 2000, Block 2001; Block Group 3; Tract 3.01: Block Group 1: Block 1000, Block 1001, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3010, Block 3011, Block 3012; Precinct 06, Precinct 07, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 25: Tract 8: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3050; Tract 9: Block Group 6: Block 6010; Block Group 7: Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7040, Block 7042, Block 7043, Block 7044; Precinct 26: Tract 6.01: Block Group 3: Block 3005, Block 3006, Block 3007, Block 3010, Block 3011, Block 3012; Tract 6.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1014, Block 1015, Block 1016, Block 1017; Tract 9: Block Group 5: Block 5016, Block 5017, Block 5024, Block 5025, Block 5026, Block 5027, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7041; Precinct 27, Precinct 28, Precinct 29, Precinct 30.

District 6: Jones County, Onslow County.

District 7: Franklin County, Granville County, Vance County, Warren County.

District 8: Brunswick County, Columbus County, Pender County.

District 9: New Hanover County.

District 10: Duplin County, Lenoir County, Sampson County.

District 11: Nash County, Wilson County.

District 12: Johnston County, Wayne County: Precinct 01, Precinct 02: Tract 2: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1020, Block 1027; Tract 3.01: Block Group 4: Block 4000, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009; Precinct 03, Precinct 04, Precinct 05, Precinct 08, Precinct 09, Precinct 16, Precinct 24, Precinct 25: Tract 8: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Tract 9: Block Group 3: Block 3010; Block Group 6: Block 6001, Block 6002, Block 6003, Block 6005, Block 6007, Block 6008, Block 6009, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6017, Block 6998, Block 6999; Block Group 7: Block 7030, Block 7031; Tract 10: Block Group 1: Block 1026; Precinct 26: Tract 9: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4021, Block 4022, Block 4023; Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5028, Block 5029, Block 5041, Block 5042, Block 5995, Block 5996; Block Group 7: Block 7005, Block 7006.

District 13: Hoke County, Robeson County.

District 14: Wake County: Precinct 01-12: Tract 527.01: Block Group 2: Block 2028, Block 2029, Block 2030, Block 2031, Block 2036, Block 2037, Block 2038; Precinct 01-18: Tract 527.01: Block Group 1: Block 1013, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Precinct 01-19, Precinct 01-20: Tract 507: Block Group 1, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Tract 521.02: Block Group 1: Block 1009; Precinct 01-21: Tract 521.01: Block Group 2: Block 2033, Block 2035, Block 2036, Block 2037, Block 2038, Block 2042, Block 2043; Tract 522.02: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1039, Block 1040, Block 1041, Block 1050, Block 1052, Block 1053, Block 1056, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1069, Block 1080; Precinct 01-22, Precinct 01-26: Tract 507: Block Group 3: Block 3012, Block 3013; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008; Tract 508: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Block Group 2: Block 2000, Block 2001, Block 2002; Block Group 3; Tract 509: Block Group 1: Block 1019; Block Group 2: Block 2000, Block 2001, Block 2009, Block 2010; Tract 521.01: Block Group 2: Block 2000; Precinct 01-28, Precinct 01-34, Precinct 01-35: Tract 508: Block Group 1: Block 1011, Block 1012; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Tract 509: Block Group 2: Block 2002, Block 2003, Block 2006, Block 2007, Block 2008, Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3019, Block 3020, Block 3021; Tract 521.01: Block Group 1, Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2039, Block 2040, Block 2041, Block 2044, Block 2045; Tract 522.01: Block Group 1: Block 1021; Tract 522.02: Block Group 1: Block 1000; Precinct 01-38, Precinct 01-40, Precinct 01-46, Precinct 01-50, Precinct 09-01, Precinct 09-02, Precinct 09-03, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 13-01, Precinct 13-03, Precinct 13-05: Tract 540.10: Block Group 1: Block 1057, Block 1060, Block 1061, Block 1062, Block 1063, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 13-06: Tract 540.10: Block Group 1: Block 1000, Block 1058, Block 1059; Precinct 13-07, Precinct 16-01: Tract 528.03: Block Group 2: Block 2033, Block 2035; Tract 528.04: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048; Precinct 16-02, Precinct 16-08, Precinct 17-01, Precinct 17-02, Precinct 17-03, Precinct 17-04, Precinct 17-05, Precinct 17-06, Precinct 17-07, Precinct 17-08, Precinct 17-09, Precinct 17-10, Precinct 17-11, Precinct 19-01, Precinct 19-02: Tract 542.01: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5142, Block 5143; Tract 542.02: Block Group 2: Block 2013, Block 2014; Precinct 19-04, Precinct 19-07: Tract 542.01: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4999; Tract 542.02: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2030, Block 2996; Precinct 19-08.

District 15: Wake County: Precinct 01-11, Precinct 01-15, Precinct 01-17, Precinct 01-18: Tract 526.02: Block Group 2: Block 2009; Tract 527.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1017, Block 1018, Block 1019; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2999; Precinct 01-29: Tract 515.01: Block Group 1: Block 1000, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Precinct 01-30, Precinct 01-36, Precinct 01-37, Precinct 01-39, Precinct 01-42, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-47, Precinct 01-51, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-05, Precinct 07-06, Precinct 07-07, Precinct 07-09, Precinct 07-11, Precinct 07-12, Precinct 07-13, Precinct 08-01, Precinct 08-02, Precinct 08-03, Precinct 08-04, Precinct 08-05, Precinct 08-06, Precinct 08-07, Precinct 08-08, Precinct 08-09, Precinct 13-02, Precinct 13-04, Precinct 13-05: Tract 540.10: Block Group 1: Block 1046, Block 1047, Block 1050, Block 1052, Block 1053, Block 1056, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084; Precinct 13-06: Tract 540.10: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1031, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1048, Block 1049, Block 1051, Block 1054, Block 1055; Precinct 14-01, Precinct 14-02, Precinct 19-02: Tract 542.01: Block Group 1, Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5113, Block 5114, Block 5115, Block 5116, Block 5117, Block 5118, Block 5119, Block 5120, Block 5121, Block 5122, Block 5123, Block 5124, Block 5125, Block 5132, Block 5133, Block 5134, Block 5135, Block 5136, Block 5137, Block 5138, Block 5139, Block 5140, Block 5141; Precinct 19-03, Precinct 19-05, Precinct 19-06, Precinct 19-07: Tract 540.10: Block Group 2: Block 2000, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023.

District 16: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-03, Precinct 01-04, Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-10, Precinct 01-12: Tract 517: Block Group 1: Block 1008; Tract 518: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3; Tract 527.01: Block Group 2: Block 2039; Precinct 01-13, Precinct 01-14, Precinct 01-16, Precinct 01-20: Tract 501: Block Group 1: Block 1052, Block 1053, Block 1054, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102; Tract 507: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003; Precinct 01-21: Tract 522.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1042, Block 1043, Block 1044, Block 1045, Block 1051, Block 1997, Block 1998, Block 1999; Block Group 2, Block Group 3; Precinct 01-23, Precinct 01-25, Precinct 01-26: Tract 501: Block Group 1: Block 1090, Block 1091, Block 1092, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117; Tract 509: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021; Precinct 01-27, Precinct 01-29: Tract 515.01: Block Group 1: Block 1008; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019; Tract 515.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Precinct 01-31, Precinct 01-32, Precinct 01-33, Precinct 01-35: Tract 508: Block Group 2: Block 2011, Block 2012, Block 2013; Tract 509: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2004, Block 2005, Block 2013; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3016, Block 3017, Block 3018; Tract 522.01: Block Group 1: Block 1000, Block 1001, Block 1018, Block 1019, Block 1020; Tract 522.02: Block Group 1: Block 1001, Block 1002; Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04: Tract 535.07: Block Group 2: Block 2001, Block 2002; Block Group 3: Block 3007, Block 3008, Block 3009; Precinct 04-05, Precinct 04-08, Precinct 04-09, Precinct 04-11, Precinct 04-12, Precinct 04-15, Precinct 04-17, Precinct 04-18, Precinct 04-20, Precinct 04-21, Precinct 05-01, Precinct 05-02, Precinct 05-03, Precinct 07-01, Precinct 07-10, Precinct 11-01, Precinct 11-02, Precinct 18-01: Tract 523.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1021, Block 1022, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041; Tract 523.02: Block Group 2: Block 2003, Block 2004, Block 2005, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2999; Precinct 18-06: Tract 523.01: Block Group 1: Block 1003, Block 1005, Block 1006, Block 1017, Block 1018, Block 1019, Block

1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 524.04: Block Group 1: Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 530.01: Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Tract 530.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1057, Block 1058, Block 1994, Block 1998, Block 1999; Precinct 18-08: Tract 530.01: Block Group 2: Block 2000, Block 2001, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2031, Block 2032, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Precinct 20-02: Tract 534.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2015, Block 2016, Block 2017, Block 2018; Tract 536: Block Group 2: Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2128, Block 2129, Block 2130, Block 2131, Block 2132, Block 2133, Block 2134, Block 2135, Block 2136, Block 2137, Block 2138, Block 2139, Block 2140, Block 2141, Block 2142, Block 2143, Block 2144, Block 2145, Block 2146, Block 2147, Block 2148, Block 2149, Block 2150, Block 2151, Block 2161, Block 2162, Block 2164, Block 2165, Block 2166, Block 2167, Block 2202, Block 2221, Block 2222, Block 2223, Block 2224, Block 2225, Block 2226, Block 2227, Block 2228, Block 2229, Block 2230, Block 2231, Block 2232, Block 2233.

District 17: Wake County: Precinct 03-00, Precinct 04-04: Tract 535.08: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Precinct 04-06, Precinct 04-07, Precinct 04-10, Precinct 04-13, Precinct 04-14, Precinct 04-16, Precinct 04-19, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 15-01, Precinct 15-02, Precinct 15-03, Precinct 15-04, Precinct 16-01: Tract 528.05: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1061; Precinct 16-03, Precinct 16-04, Precinct 16-05, Precinct 16-06, Precinct 16-07, Precinct 16-09, Precinct 18-01: Tract 530.02: Block Group 2: Block 2019, Block 2020, Block 2021; Precinct 18-02, Precinct 18-03, Precinct 18-04, Precinct 18-05, Precinct 18-06: Tract 530.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1044, Block 1045, Block 1046, Block 1049, Block 1050, Block 1993; Precinct 18-07, Precinct 18-08: Tract 530.01: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Block Group 2: Block 2028, Block 2029, Block 2030, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2044, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2164, Block 2165; Precinct 20-01, Precinct 20-02: Tract 534.03: Block Group 2: Block 2013, Block 2014, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2054, Block 2055, Block 2056, Block 2057; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011; Precinct 20-03, Precinct 20-04, Precinct 20-05, Precinct 20-06, Precinct 20-07, Precinct 20-08, Precinct 20-09, Precinct 20-10.

District 18: Chatham County, Durham County: Precinct 03: Tract 4.01: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 4.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1043, Block 1048; Tract 5: Block Group 1: Block 1003; Precinct 04: Tract 4.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023; Tract 4.02: Block Group 1: Block 1013, Block 1014; Precinct 05: Tract 5: Block Group 1: Block 1004, Block 1005; Tract 15.01, Tract 15.02; Precinct 06: Tract 6: Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2026, Block 2027, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Precinct 16, Precinct 27, Precinct 35, Precinct 36, Precinct 38, Precinct 39, Precinct 43, Precinct 48, Precinct 50, Precinct 51, Precinct 53, Precinct 54; Lee County.

District 19: Bladen County, Cumberland County: Precinct Alderman, Precinct Arran Hills, Precinct Beaver Dam & Cedar Creek, Precinct Black River, Precinct Brentwood, Precinct Cross Creek 01, Precinct Cross Creek 02, Precinct Cross Creek 08, Precinct Cross Creek 10, Precinct Cross Creek 11, Precinct Cross Creek 12, Precinct Cross Creek 14: Tract 7: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Precinct Cross Creek 15, Precinct Cross Creek 18, Precinct Cross Creek 20, Precinct Cross Creek 29, Precinct Cross Creek 30, Precinct Cross Creek 31, Precinct Cross Creek 34, Precinct Cumberland 1, Hope Mills 1, & Stoney Point, Precinct Cumberland 2, Precinct Cumberland 3, Precinct Eastover, Precinct Hope Mills 2, Precinct Hope Mills 3, Precinct Judson-Vander, Precinct Linden, Precinct Pearces Mill 2, Precinct Pearces Mill 3, Precinct Pearces Mill 4, Precinct Sherwood, Precinct Stedman, Precinct Wade.

District 20: Durham County: Precinct 01, Precinct 02, Precinct 03: Tract 4.01: Block Group 3: Block 3001, Block 3002, Block 3003; Tract 4.02: Block Group 1: Block 1001, Block 1002, Block 1025, Block 1026, Block 1029, Block 1030, Block 1041, Block 1042, Block 1044, Block 1045, Block 1046, Block 1047; Tract 5: Block Group 1: Block 1001, Block 1002; Precinct 04: Tract 4.01: Block Group 1: Block 1010, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024; Block Group 2: Block 2001; Precinct 05: Tract 5: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Tract 6: Block

Group 2: Block 2000, Block 2001, Block 2002; Precinct 06: Tract 5: Block Group 3: Block 3006, Block 3007; Tract 6: Block Group 2: Block 2003, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028, Block 2029; Precinct 07, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 24, Precinct 25, Precinct 26, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 37, Precinct 40, Precinct 41, Precinct 42, Precinct 44, Precinct 45, Precinct 46, Precinct 47, Precinct 49, Precinct 52.

District 21: Cumberland County: Precinct Auman, Precinct Cliffdale West, Precinct Cross Creek 03, Precinct Cross Creek 04, Precinct Cross Creek 05, Precinct Cross Creek 06, Precinct Cross Creek 07, Precinct Cross Creek 09, Precinct Cross Creek 13, Precinct Cross Creek 14: Tract 9: Block Group 2: Block 2012; Block Group 3, Block Group 6: Block 6004, Block 6005, Block 6006, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013; Tract 20: Block Group 1: Block 1000, Block 1018; Tract 21: Block Group 2, Block Group 5; Precinct Cross Creek 16, Precinct Cross Creek 17, Precinct Cross Creek 19, Precinct Cross Creek 21, Precinct Cross Creek 22, Precinct Cross Creek 23, Precinct Cross Creek 24, Precinct Cross Creek 25, Precinct Cross Creek 26, Precinct Cross Creek 27, Precinct Cross Creek 28, Precinct Cross Creek 32, Precinct Cross Creek 33, Precinct Lake Rim, Precinct Long Hill, Precinct Manchester, Precinct Montibello, Precinct Morganton Rd 2, Precinct Spring Lake, Precinct Westarea.

District 22: Harnett County, Moore County.

District 23: Orange County, Person County.

District 24: Alamance County, Caswell County.

District 25: Anson County, Richmond County, Scotland County, Stanly County.

District 26: Guilford County: Precinct Center Grove North, Precinct Clay North 1, Precinct Clay North 2, Precinct Clay South, Precinct Deep River North, Precinct Fentress 2, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct GB 06: Tract 154: Block Group 6: Block 6006; Precinct GB 39: Tract 161.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct GB 40A: Tract 160.02: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Tract 161.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1999; Precinct GB 41, Precinct GB 64: Tract 160.04: Block Group 4: Block 4063, Block 4064, Block 4065, Block 4066, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1002, Block 1003; Precinct Gibsonville, Precinct Greene, Precinct Jefferson 1: Tract 128.03: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1031; Tract 153: Block Group 1: Block 1004, Block 1005, Block 1013, Block 1014, Block 1025, Block 1026, Block 1027, Block 1028, Block 1056, Block 1057, Block 1058; Block Group 2; Tract 154: Block Group 5: Block 5027, Block 5028, Block 5029, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5048, Block 5049; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6007, Block 6009, Block 6010, Block 6011, Block 6012, Block

6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019; Precinct Jefferson 2: Tract 128.03: Block Group 1: Block 1024, Block 1028, Block 1029, Block 1030, Block 1032; Tract 153: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035; Precinct Jefferson 4, Precinct Madison North, Precinct Madison South, Precinct Monroe 3, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Stokesdale, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Washington North, Precinct Washington South; Rockingham County.

District 27: Guilford County: Precinct Center Grove 1, Precinct Center Grove 2, Precinct Center Grove 3, Precinct GB 01, Precinct GB 02, Precinct GB 07, Precinct GB 08, Precinct GB 09, Precinct GB 10, Precinct GB 11, Precinct GB 12, Precinct GB 13, Precinct GB 14, Precinct GB 15, Precinct GB 16, Precinct GB 17, Precinct GB 18, Precinct GB 19, Precinct GB 20, Precinct GB 21, Precinct GB 22, Precinct GB 23, Precinct GB 24, Precinct GB 25, Precinct GB 26, Precinct GB 27, Precinct GB 28, Precinct GB 29, Precinct GB 30, Precinct GB 31, Precinct GB 32, Precinct GB 33, Precinct GB 34, Precinct GB 35, Precinct GB 36, Precinct GB 37, Precinct GB 38, Precinct GB 39: Tract 125.06: Block Group 1: Block 1065, Block 1067; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007; Precinct GB 40A: Tract 160.02: Block Group 2: Block 2004, Block 2005; Precinct GB 40B, Precinct GB 42, Precinct GB 43, Precinct GB 44, Precinct GB 45, Precinct GB 47, Precinct GB 48, Precinct GB 49, Precinct GB 50, Precinct GB 51, Precinct GB 52: Tract 126.04: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3017; Precinct GB 54, Precinct GB 55, Precinct GB 56, Precinct GB 57, Precinct GB 58, Precinct GB 59, Precinct GB 60, Precinct GB 61, Precinct GB 62, Precinct GB 63, Precinct GB 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4067; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Precinct Monroe 1, Precinct Monroe 2.

District 28: Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1035, Block 1044, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1055, Block 1056, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1134, Block 1135, Block 1136, Block 1137, Block 1141, Block 1142, Block 1143, Block 1144, Block 1145, Block 1146; Precinct Fentress 1, Precinct Friendship 1, Precinct Friendship 2, Precinct GB 03, Precinct GB 04, Precinct GB 05, Precinct GB 06: Tract 127.05: Block Group 2: Block 2000, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Tract 127.06: Block Group 2: Block 2000, Block 2001, Block 2004, Block 2005, Block 2006, Block 2007, Block 2011, Block 2013; Tract 127.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Tract 128.03: Block Group 1: Block 1001, Block 1003, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1999; Tract 154: Block Group 6: Block 6008; Precinct GB 46, Precinct GB 52: Tract 113: Block Group 2: Block 2015, Block 2016, Block 2019, Block 2020, Block 2021; Tract 114: Block Group 5: Block 5006, Block 5007, Block 5008; Tract 126.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1011, Block 1012, Block 1013, Block 1026, Block 1027; Precinct GB 53, Precinct GB 64: Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct GB 65, Precinct GB 66, Precinct GB 67, Precinct GB 68, Precinct GB 69, Precinct GB 70, Precinct GB 71, Precinct GB 72, Precinct GB 73, Precinct GB 74, Precinct GB 75, Precinct HP, Precinct HP 01, Precinct HP 02, Precinct HP 03, Precinct HP 04, Precinct HP 05, Precinct HP 06, Precinct HP 07, Precinct HP 08, Precinct HP 09, Precinct HP 10, Precinct HP 11, Precinct HP 12, Precinct HP 17, Precinct HP 18, Precinct HP 19A, Precinct HP 19B, Precinct HP 20A, Precinct HP 20B, Precinct HP 26, Precinct HP 27, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 1: Tract 127.06: Block Group 2: Block 2002, Block 2003; Tract 128.03: Block Group 1: Block 1000, Block 1002, Block 1004, Block 1011, Block 1017, Block 1033, Block 1034, Block 1080; Precinct Jefferson 2: Tract 111.02: Block Group 2: Block 2000; Tract 127.07: Block Group 1: Block 1000, Block 1001; Tract 128.03: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1049, Block 1051, Block 1055, Block 1066, Block 1067, Block 1069, Block 1070, Block 1074, Block 1075, Block 1076, Block 1077; Block Group 2: Block 2000, Block 2001, Block 2007, Block 2012, Block 2013, Block 2038; Tract 153: Block Group 3: Block 3036; Precinct Jefferson 3, Precinct Pleasant Garden 1, Precinct Pleasant Garden 2, Precinct Sumner 1, Precinct Sumner 2, Precinct Sumner 3, Precinct Sumner 4.

District 29: Montgomery County, Randolph County.

District 30: Alleghany County, Stokes County, Surry County, Yadkin County.

District 31: Forsyth County: Precinct 011, Precinct 012, Precinct 013: Tract 33.07: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1033, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1999; Tract 33.08: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1022, Block 1023, Block 1024, Block 1025, Block 1047; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2024, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2999; Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032: Tract 28.05: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1025, Block 1026, Block 1027, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1100; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3052, Block 3053, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3064, Block 3065, Block 3066, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3995, Block 3996, Block 3997, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4017, Block 4018; Precinct 033: Tract 28.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Tract 29.01: Block Group 2: Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2033; Precinct 034, Precinct 043: Tract 33.03: Block Group 3: Block 3034, Block 3035, Block 3036, Block 3037; Tract 34.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2021, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2035; Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 091, Precinct 092, Precinct 101: Tract 28.01: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3061, Block 3062, Block 3063; Tract 28.04: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Block Group 3: Block 3025, Block 3026, Block 3027, Block 3028; Tract 28.05: Block Group 3: Block 3063; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4019; Precinct 111, Precinct 112, Precinct 123: Tract 39.04: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029; Precinct 131, Precinct 132, Precinct 133, Precinct 507: Tract 33.03: Block Group 2: Block 2000, Block 2057, Block 2058, Block 2059; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3028, Block 3029; Precinct 701, Precinct 702, Precinct 703, Precinct 704: Tract 10: Block Group 3: Block 3009; Tract 21: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 22:

Block Group 4: Block 4014, Block 4015, Block 4018, Block 4019; Precinct 705: Tract 21: Block Group 2, Block Group 3: Block 3002, Block 3003; Tract 22: Block Group 5: Block 5026, Block 5027, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Precinct 706, Precinct 707: Tract 22: Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025; Tract 25.02: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2021, Block 2022, Block 2023, Block 2024, Block 2998, Block 2999; Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808: Tract 39.04: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2015, Block 2016; Tract 39.05: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Tract 39.06: Block Group 3: Block 3009, Block 3010, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018; Precinct 809, Precinct 901, Precinct 906, Precinct 907.

District 32: Forsyth County: Precinct 013: Tract 33.08: Block Group 2: Block 2023, Block 2025, Block 2026, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2998; Precinct 032: Tract 28.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Tract 28.06: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1031; Precinct 033: Tract 27.02: Block Group 1: Block 1000, Block 1001, Block 1012; Tract 28.05: Block Group 2: Block 2027, Block 2028; Tract 28.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2; Precinct 042, Precinct 043: Tract 33.03: Block Group 3: Block 3032, Block 3033, Block 3038, Block 3039; Tract 34.01: Block Group 1: Block 1000, Block 1001, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1033, Block 1034, Block 1035, Block 1036, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1056, Block 1057, Block 1058; Block Group 2; Tract 34.02: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2022, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037; Precinct 081, Precinct 082, Precinct 083, Precinct 101: Tract 28.04: Block Group 1: Block 1016, Block 1017, Block 1999; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3029, Block 3030; Precinct 122, Precinct 123: Tract 39.03: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506, Precinct 507: Tract 33.03: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2006, Block

2007, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2023, Block 2024, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2060, Block 2061, Block 2062, Block 2998; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3030, Block 3031, Block 3040, Block 3041; Tract 34.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1037, Block 1038, Block 1039, Block 1040, Block 1052, Block 1053, Block 1054, Block 1055; Precinct 601, Precinct 602, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 607, Precinct 704: Tract 10: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3010, Block 3011; Precinct 705: Tract 38.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1997, Block 1998, Block 1999; Block Group 3: Block 3000; Tract 38.04: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct 707: Tract 38.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003; Precinct 708, Precinct 709, Precinct 808: Tract 39.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Precinct 902, Precinct 903, Precinct 904, Precinct 905, Precinct 908, Precinct 909.

District 33: Davidson County, Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1075, Block 1076, Block 1079, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1108, Block 1115, Block 1118, Block 1119, Block 1138, Block 1139, Block 1140; Tract 163.01: Block Group 2: Block 2012; Precinct HP 13, Precinct HP 14, Precinct HP 15, Precinct HP 16, Precinct HP 21, Precinct HP 22, Precinct HP 23, Precinct HP 24, Precinct HP 25.

District 34: Davie County, Rowan County.

District 35: Mecklenburg County: Precinct 201, Precinct 216, Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 234, Precinct 235, Precinct 236; Union County.

District 36: Cabarrus County, Iredell County: Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4: Tract 613: Block Group 1: Block 1019, Block 1066, Block 1067, Block 1068, Block 1070; Tract 614: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5062, Block 5063, Block 5064, Block 5065, Block 5073, Block 5999; Block Group 8: Block 8029, Block 8030, Block 8031, Block 8032, Block 8033, Block 8034, Block 8035, Block 8038, Block 8039, Block 8044, Block 8045, Block 8046, Block 8047, Block 8048, Block 8049, Block 8050, Block 8051, Block 8052, Block 8053, Block 8054, Block 8055, Block 8056, Block 8057, Block 8061; Tract 616:

Block Group 5: Block 5007, Block 5008, Block 5010, Block 5011, Block 5013, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5025, Block 5031; Block Group 6: Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6016, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036.

District 37: Mecklenburg County: Precinct 001, Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 008, Precinct 009, Precinct 010, Precinct 015, Precinct 017, Precinct 018, Precinct 020, Precinct 021, Precinct 029, Precinct 032, Precinct 033, Precinct 034, Precinct 035, Precinct 037, Precinct 038, Precinct 044, Precinct 045, Precinct 046, Precinct 047, Precinct 049, Precinct 050, Precinct 051, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 066, Precinct 083, Precinct 084, Precinct 094, Precinct 095, Precinct 099, Precinct 102, Precinct 108, Precinct 109, Precinct 115, Precinct 116, Precinct 117, Precinct 123, Precinct 124, Precinct 125, Precinct 130, Precinct 203, Precinct 205.

District 38: Mecklenburg County: Precinct 011, Precinct 012, Precinct 013, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 027: Tract 52: Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4025, Block 4026, Block 4027, Block 4028, Block 4030, Block 4031, Block 4038; Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 056: Tract 51: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Tract 52: Block Group 3: Block 3004, Block 3005; Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 098, Precinct 120, Precinct 122, Precinct 134, Precinct 138, Precinct 200, Precinct 209, Precinct 210, Precinct 211: Tract 61.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1011, Block 1062, Block 1063; Tract 61.02: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3030, Block 3040; Precinct 222, Precinct 223, Precinct 224, Precinct 225: Tract 58.06: Block Group 1: Block 1012, Block 1013, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1037, Block 1038, Block 1039; Precinct 228, Precinct 229, Precinct 230, Precinct 243, Precinct 77, Precinct 97.

District 39: Mecklenburg County: Precinct 019, Precinct 036, Precinct 048, Precinct 057, Precinct 058, Precinct 059, Precinct 065, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 085, Precinct 086, Precinct 087, Precinct 088, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 096, Precinct 100, Precinct 101, Precinct 103, Precinct 106, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 114, Precinct 118, Precinct 119, Precinct 121, Precinct 129, Precinct 131, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 144, Precinct 215, Precinct 217, Precinct 225: Tract 58.06: Block Group 1: Block 1034, Block 1035, Block 1036, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1070, Block 1076, Block 1078, Block 1080, Block

1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092; Block Group 2; Tract 58.07: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014; Precinct 226, Precinct 227, Precinct 231, Precinct 232, Precinct 233.

District 40: Mecklenburg County: Precinct 003, Precinct 014, Precinct 026, Precinct 027: Tract 52: Block Group 1: Block 1000, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Tract 53.01: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1019, Block 1020, Block 1021, Block 1022, Block 1036, Block 1037; Precinct 028, Precinct 030, Precinct 042, Precinct 043, Precinct 056: Tract 50: Block Group 2: Block 2000, Block 2001, Block 2005; Tract 51: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Tract 52: Block Group 1: Block 1001; Tract 53.01: Block Group 1: Block 1001, Block 1002, Block 1013, Block 1014, Block 1018; Precinct 060, Precinct 082, Precinct 104, Precinct 105, Precinct 107, Precinct 126, Precinct 127, Precinct 128, Precinct 132, Precinct 133, Precinct 135, Precinct 141, Precinct 142, Precinct 143, Precinct 145, Precinct 202, Precinct 204, Precinct 206, Precinct 207, Precinct 208, Precinct 211: Tract 55.03: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066; Tract 61.02: Block Group 3: Block 3000, Block 3001, Block 3005, Block 3006, Block 3007, Block 3026, Block 3027, Block 3028, Block 3029, Block 3031, Block 3032; Precinct 212, Precinct 213, Precinct 214, Precinct 237, Precinct 238, Precinct 239, Precinct 240, Precinct 241, Precinct 242.

District 41: Gaston County: Precinct Alexis, Precinct Lucia, Precinct Mt Holly 1, Precinct Mt Holly 2, Precinct Stanley 1, Precinct Stanley 2; Iredell County: Precinct Barringer, Precinct Bethany, Precinct Chambersburg, Precinct Coddle Creek 4: Tract 612: Block Group 9: Block 9031, Block 9032, Block 9033, Block 9034, Block 9035, Block 9036, Block 9051, Block 9053; Tract 613: Block Group 1: Block 1017, Block 1018, Block 1051, Block 1052, Block 1055, Block 1056, Block 1057, Block 1058, Block 1061, Block 1063, Block 1064, Block 1065, Block 1078; Tract 614: Block Group 3: Block 3001; Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5014, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5025, Block 5026, Block 5030, Block 5032, Block 5033, Block 5042, Block 5046, Block 5047, Block 5048, Block 5059, Block 5060, Block 5061, Block 5066, Block 5067, Block 5068, Block 5069, Block 5070, Block 5072, Block 5076, Block 5077, Block 5078, Block 5081, Block 5082, Block 5083, Block 5998; Precinct Cool Springs, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6; Lincoln County.

District 42: Catawba County, Iredell County: Precinct Concord, Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Shiloh, Precinct Turnersburg, Precinct Union Grove.

District 43: Gaston County: Precinct Armstrong, Precinct Ashbrook, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Catawba Heights, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct Cramerton, Precinct Crowders Mountain, Precinct Dallas 1, Precinct Dallas 2, Precinct Flint Grove, Precinct Forest Heights, Precinct Gardner Park, Precinct Gaston Day, Precinct

Grier, Precinct Health Center, Precinct High Shoals, Precinct Highland, Precinct Landers Chapel, Precinct Lowell, Precinct Mcadenville, Precinct Myrtle, Precinct New Hope, Precinct Pleasant Ridge, Precinct Ranlo, Precinct Robinson 1, Precinct Robinson 2, Precinct Sherwood, Precinct South Gastonia, Precinct Southpoint, Precinct Tryon, Precinct Union, Precinct Victory, Precinct Wood Hill, Precinct York Chester.

District 44: Burke County, Caldwell County.

District 45: Alexander County, Ashe County, Watauga County, Wilkes County.

District 46: Cleveland County, Rutherford County.

District 47: Avery County, Haywood County: Precinct Allens Creek, Precinct Beaverdam 1, Precinct Beaverdam 2, Precinct Beaverdam 3, Precinct Beaverdam 4, Precinct Beaverdam 5/6, Precinct Beaverdam 7, Precinct Big Creek, Precinct Clyde North, Precinct Clyde South, Precinct Crabtree, Precinct Fines Creek 1, Precinct Fines Creek 2, Precinct Hazelwood, Precinct Iron Duff, Precinct Ivy Hill, Precinct Jonathan Creek, Precinct Lake Junaluska, Precinct Saunook, Precinct Waynesville Center, Precinct Waynesville East, Precinct Waynesville South 1, Precinct Waynesville South 2, Precinct Waynesville West, Precinct White Oak; Madison County, McDowell County, Mitchell County, Yancey County.

District 48: Buncombe County: Precinct Asheville 18, Precinct Asheville 19, Precinct Asheville 24: Tract 12: Block Group 5: Block 5001, Block 5002, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5029, Block 5030, Block 5033, Block 5034, Block 5992, Block 5993, Block 5994, Block 5995; Tract 23.02: Block Group 3: Block 3014, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3028, Block 3029, Block 3030, Block 3031, Block 3043, Block 3044, Block 3045, Block 3046, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3060, Block 3062, Block 3992, Block 3993, Block 3994; Precinct Asheville 29, Precinct Averys Creek, Precinct Biltmore, Precinct Broad River, Precinct Fairview 1, Precinct Fairview 2, Precinct Limestone 1, Precinct Limestone 2, Precinct Limestone 3, Precinct Limestone 4, Precinct Lower Hominy 1, Precinct Lower Hominy 3, Precinct Upper Hominy 1 & 3; Henderson County, Polk County.

District 49: Buncombe County: Precinct Asheville 01, Precinct Asheville 02, Precinct Asheville 03, Precinct Asheville 04, Precinct Asheville 05, Precinct Asheville 06, Precinct Asheville 07, Precinct Asheville 08, Precinct Asheville 09, Precinct Asheville 10, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14, Precinct Asheville 15, Precinct Asheville 16, Precinct Asheville 17, Precinct Asheville 20, Precinct Asheville 21, Precinct Asheville 22, Precinct Asheville 23, Precinct Asheville 24: Tract 12: Block Group 5: Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5026, Block 5027, Block 5028; Tract 13: Block Group 2: Block 2015, Block 2016, Block 2018, Block 2023, Block 2024, Block 2025, Block 2027; Tract 23.02: Block Group 3: Block 3064, Block 3987; Tract 25.02: Block Group 4: Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030; Block Group 6: Block 6000, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6024, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030; Precinct Asheville 25, Precinct Asheville 26, Precinct Asheville 27, Precinct Asheville 28, Precinct Black Mountain 1, Precinct Black Mountain 2, Precinct Black Mountain 3, Precinct Black Mountain 4, Precinct Black Mountain 5, Precinct Flat Creek, Precinct French Broad, Precinct Hazel 1, Precinct Hazel 2, Precinct Ivy 1 & 2, Precinct Leicester 1, Precinct Leicester

2 & Sandy Mush, Precinct Lower Hominy 2, Precinct North Buncombe, Precinct Reems Creek, Precinct Reynolds, Precinct Riceville 1 & Swannanoa 2, Precinct Riceville 2 & Swannanoa 3, Precinct Swannanoa 1, Precinct Upper Hominy 2, Precinct Weaverville, Precinct West Buncombe 1, Precinct West Buncombe 2, Precinct Woodfin, Precinct Woodland Hills.

District 50: Cherokee County, Clay County, Graham County, Haywood County: Precinct Cecil, Precinct East Fork, Precinct Pigeon, Precinct Pigeon Center; Jackson County, Macon County, Swain County, Transylvania County.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of October 20, 2003, to reflect precincts updated as outlined in subsection (c) of this section. However, the boundary corner between Forsyth, Stokes, and Rockingham Counties is as established by Chapter 23, Public Laws of 1848-49.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect with greater accuracy the precincts as they existed as of October 20, 2003, including changes made to precincts after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in several counties. Those changes include actions by county boards of elections to divide, merge, and otherwise realign precincts. Where a realignment of precinct boundaries by a county board of elections is impossible to reflect in the database using Census geography, the Legislative Services Office modified the database by either merging two precincts or by approximating the boundary using Census geography. The following is a list, for informational purposes only, of precincts shown in the TIGER Files, the geography of which has been modified in the Legislative Services Office computer database:

(1) Anson County: All precincts except Burnsville, Peachland, and White Store.
(2) Buncombe County: Asheville 4, 15, 22, 19, Riceville Swannanoa 2 CRU, and Black Mountain 3.
(3) Cabarrus County: 0202 and 1209.
(4) Caldwell County: Lovelady 2.
(5) Carteret County: Cape Carteret, Cedar Point, Indian Beach, Salter Path, Newport 1, and Newport 2.
(6) Caswell County: Yanceyville 2 and Yanceyville 4.
(7) Chatham County: East Williams, North Williams, and West Williams.
(8) Craven County: Havelock.
(9) Cumberland County: Beaver Dam, Cedar Creek, Arran Hills, Cumberland 1, Hope Mills 1, and Stoney Point.
(10) Dare County: Manteo.
(11) Gates County: 1 and 5.
(12) Guilford County: Greensboro 40, North Clay, High Point 19, High Point 20, Center Grove 1, and Summerfield 3.
(13) Hertford County: Murfreesboro 2 and Murfreesboro 3.
(14) Iredell County: Coddle Creek 1 through 4 and Statesville 1 through 6.
(15) Johnston County: East Clayton, Pleasant Grove, and Wilders.
(16) Lee County: West Sanford 2.
(17) Lincoln County: North Brook I/II, Iron Station, Lowesville, Denver, Hickory Grove, Pumpkin Center, and Triangle.
(18) Mecklenburg County: 77, 97, 121, 122, 138, 140, 142, 143, 144, 202, 206, 225, 228, 239, 240, and 242.
(19) Moore County: Eureka and Knollwood.

(20) New Hanover County: Harnett 2 and 8.
(21) Onslow County: Voting Districts Not Defined.
(22) Orange County: Booker Creek, Cedar Falls, Dogwood Acres, and Frank Porter Graham.
(23) Pasquotank County: Precincts Mt. Hermon, Providence, 1A, 1B, 2A, 2B, 3A, 3B, and 4A.
(24) Robeson County: Fairmont 1 and 2 and Red Springs 1 and 2.
(25) Rowan County: Bostian Crossroads, Enochville, Franklin, and Granite Quarry.
(26) Union County: 22 and 33.
(27) Wake County: 01-22, 01-32, 01-43, 04-09, 04-11, 05-00, 07-02, 07-05, 07-06, 08-01, 08-03, 08-04, 09-02, 10-01, 10-02, 12-01, 12-02, 12-04, 13-02, 13-03, 15-01, 15-02, 16-01, 16-04, 17-01, 17-02, 17-05, 17-07, 18-02, 18-03, 19-02, 19-03, 19-04, 20-01, 20-03, 20-04, and 20-06.

The database is available for public inspection, and where it differs from the foregoing list, the database prevails.

In additional instances, precincts shown in the TIGER Files have not been changed geographically, but the names that appear in TIGER have been modified to correct misspellings, to standardize naming, or to reflect more closely the names used by county boards of elections and the State Board of Elections.

(d) If any precinct boundary is changed, that change shall not change the boundary of a senatorial district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.
(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.
(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C.S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177; 1981, c. 821; 1982, Ex. Sess., c. 5; 1982, 2nd Ex. Sess., c. 2; 1984, Ex. Sess., c. 4, ss. 1-3; c. 5, ss. 1-4; 1991, c. 676, s. 1; 1991, Ex. Sess., c. 4, ss. 1, 2; 2001-458, ss. 1, 2; 2001-487, s. 121.5; 2002-1, Ex. Sess., s. 3.1; 2003-434, 1st Ex. Sess., ss. 3, 4.)

District Plans for 2002 Elections. — Session Laws 2002-1 enacted a House Redistricting Plan ("Proposed House Plan - Sutton 5") and a Senate Redistricting Plan ("Proposed Senate Plan - Fewer Divided Counties"), which were created to correct constitutional deficiencies found by the North Carolina Supreme Court in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002), in Sutton House Plan 3 (enacted by Session Laws 2001-458) and in NC Senate Plan 1C (enacted by Session Laws 2001-459). The House and Senate Redistricting Plans were ratified on May 17, 2002, and became Session Laws 2002-1 on May 20, 2002.

Both plans were subsequently held constitutionally invalid by the North Carolina Superior Court in Stephenson v. Bartlett, No. 01 CVS 2885 (N.C. Sup. Ct. May 31, 2002). In their place, the North Carolina Superior Court, on May 31, 2002, presented "Interim House Redistricting Plan for NC 2002 Elections" and "Interim Senate Redistricting Plan for NC 2002 Elections," and ordered that, upon preclearance by the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, the plans be immediately implemented so that the election process could proceed forthwith. Preclearance was received from the United States Department of Justice by letter dated July 12, 2002.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 4, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on February 6, 1992.

Session Laws 1998-15, s. 1, referred to in the last sentence of subsection (b) of this section, transfers the area of Mecklenburg County known as Meck Neck to Iredell County. The act was further amended by Session Laws 2001-429.

Session Laws 2001-458, as amended by Session Laws 2001-487, s. 121.5, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on February 11, 2002.

Session Laws 2002-1 (Extra Session), s. 3.2, provides: "The plan adopted by Section 3.1 of this act is effective for the elections for the years 2002, 2004, 2006, 2008, and 2010 unless the United States Supreme Court reverses the decision holding unconstitutional G.S. 120-1 as it existed prior to the enactment of this act (or the decision is otherwise enjoined, made inoperable or ineffective),and in any such case the prior version of G.S. 120-1 is again effective."

Session Laws 2002-1 (Extra Session), s. 3.3, provides: "If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. Specifically, the provisions of this act adopting a districting plan for the House of Representatives are severable from the provisions of this act adopting a districting plan for the Senate."

The bracketed language in subsection (a) was probably inadvertently omitted when this section was amended, and has been re-inserted in brackets at the direction of the Revisor of Statutes.

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, s. 15, contains a severability clause.

Legal Periodicals. — For article, "Political Gerrymandering after Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the

Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

Constitutionality. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, § 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Use of both single-member and multi-member districts within the same redistricting plan violates the Equal Protection Clause of the State Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

As to the vote diluting effect of a multimember electoral structure, see Thornburg v. Gingles, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

Former section was held valid in Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966), aff'd, 383 U.S. 831, 86 S. Ct. 1237, 16 L. Ed. 2d 298 (1966).

§ 120-2. House apportionment specified.

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2004 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each district electing one Representative:

District 1: Camden County, Currituck County, Pasquotank County, Tyrrell County.

District 2: Chowan County, Dare County, Hyde County, Washington County.

District 3: Craven County: Precinct Brices Creek: Tract 9610: Block Group 5: Block 5016, Block 5017, Block 5997, Block 5998, Block 5999; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6024, Block 6993, Block 6994, Block 6995, Block 6996, Block 6998, Block 6999; Precinct Bridgeton, Precinct Clarks: Tract 9603: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1998, Block 1999; Tract 9605: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3995; Precinct Croatan: Tract 9611: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1037, Block 1038, Block 1039, Block 1040, Block 1997, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002; Precinct Epworth, Precinct Ernul, Precinct Fairfield Harbour, Precinct Fort Barnwell, Precinct Fort Totten: Tract 9604: Block Group 1: Block 1049; Tract 9607: Block Group 2: Block 2002, Block 2009, Block 2010, Block 2011, Block 2012, Block 2015, Block 2016, Block 2020; Precinct George Street: Tract 9604: Block Group 1: Block 1041, Block 1042, Block 1043, Block 1051, Block 1052, Block 1053, Block 1054, Block 1062, Block 1998; Tract 9609: Block Group 1: Block 1000, Block 1001, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1996, Block 1997, Block 1998, Block 1999; Precinct Glenburnie Park: Tract 9605: Block Group 3: Block 3000, Block 3001, Block 3997, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4033, Block 4034, Block 4998, Block 4999; Tract 9606: Block Group 3: Block 3000; Tract 9608: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001; Precinct Grantham: Tract 9610: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2003, Block 2023, Block 2028, Block 2029, Block 2030, Block 2999; Block Group 3, Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7009, Block 7010, Block 7011; Tract 9611: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1998; Precinct Grover C. Fields: Tract 9605: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4032; Tract 9606: Block Group 2: Block 2000, Block 2005, Block 2006; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3015, Block 3016, Block 3017, Block 3018, Block 3026, Block 3039, Block 3040, Block 3041; Block Group 4: Block 4027, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4035, Block 4036, Block 4037; Tract 9607: Block Group 1: Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2023, Block 2024; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Precinct H.J. Macdonald: Tract 9606: Block Group 1: Block 1008, Block 1009, Block 1010; Precinct Havelock East: Tract 9613: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2031, Block 2032; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016; Block Group 4: Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4027; Block Group 5: Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5053, Block 5054, Block 5056, Block 5057; Precinct Havelock West: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2029, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998; Tract 9612: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1996, Block 1997; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1022, Block 1026, Block 1027, Block 1028, Block 1999; Precinct Jasper: Tract 9603: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1996; Precinct New Bern West: Tract 9604: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008; Block Group 5: Block 5000, Block 5001, Block 5017, Block 5018, Block 5019, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6012, Block 6013, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6995, Block 6999; Tract 9606: Block Group 1: Block 1007; Block Group 2: Block 2001, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 9607: Block Group 3: Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Precinct Rhems: Tract 9604: Block Group 5: Block 5070; Block Group 7: Block 7000, Block 7001; Precinct River Bend: Tract 9604: Block Group 5: Block 5073, Block 5074; Block Group 7: Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7019, Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7040, Block 7041, Block 7042, Block 7043, Block 7044, Block 7045, Block 7046, Block 7047, Block 7994, Block 7995, Block 7996, Block 7997; Precinct Trent Woods: Tract 9604: Block Group 1: Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3998, Block 3999; Block Group 6: Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6996, Block 6998; Precinct Truitt, Precinct Vanceboro; Pamlico County.

District 4: Duplin County, Onslow County: Precinct Catherine Lake, Precinct Gum Branch, Precinct Richlands, Precinct Tar Landing.

District 5: Bertie County, Gates County, Hertford County, Perquimans County.

District 6: Beaufort County, Pitt County: Precinct Greenville 08A, Precinct Greenville 08B, Precinct Greenville 09: Tract 3: Block Group 1, Block Group 2:

Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015, Block 2016; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4999; Tract 9: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2055, Block 2056, Block 2057, Block 2059, Block 2993, Block 2994, Block 2995, Block 2996; Tract 10: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4997; Precinct Greenville 10B, Precinct Grimesland, Precinct Pactolus, Precinct Simpson A, Precinct Simpson B.

District 7: Halifax County: Precinct Butterwood: Tract 9906: Block Group 2: Block 2018, Block 2019, Block 2021, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060; Tract 9907: Block Group 4: Block 4030, Block 4031; Tract 9908: Block Group 1: Block 1000, Block 1029; Precinct Conoconnara, Precinct Enfield 1, Precinct Enfield 2, Precinct Enfield 3, Precinct Faucett, Precinct Halifax, Precinct Hobgood, Precinct Hollister: Tract 9906: Block Group 3: Block 3011, Block 3012, Block 3013, Block 3019, Block 3020, Block 3021; Tract 9908: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1036, Block 1037, Block 1038, Block 1039; Block Group 2: Block 2011; Block Group 3: Block 3000; Block Group 4: Block 4000, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4020; Precinct Littleton 1: Tract 9906: Block Group 2: Block 2020; Tract 9907: Block Group 2: Block 2013; Block Group 4: Block 4000, Block 4001, Block 4003, Block 4004, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4029; Precinct Palmyra, Precinct Ringwood, Precinct Roanoke Rapids 07, Precinct Roanoke Rapids 08, Precinct Roanoke Rapids 09, Precinct Roanoke Rapids 10, Precinct Roanoke Rapids 11: Tract 9905: Block Group 1: Block 1040, Block 1041, Block 1042, Block 1043, Block 1045, Block 1046; Block Group 2: Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Precinct Roseneath, Precinct Scotland Neck 1, Precinct Scotland Neck 2, Precinct Weldon 1, Precinct Weldon 2, Precinct Weldon 3; Nash County: Precinct Rocky Mount 01, Precinct Rocky Mount 02, Precinct Rocky Mount 03, Precinct Rocky Mount 04: Tract 102: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3001, Block 3002, Block 3004, Block 3005, Block 3006, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Tract 103: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018; Precinct Rocky Mount 10, Precinct Whitakers North 1, Precinct Whitakers South.

District 8: Martin County, Pitt County: Precinct Arthur: Tract 17: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1075, Block 1076, Block 1077; Tract 18: Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004; Precinct Belvoir, Precinct Bethel, Precinct Carolina, Precinct Falkland, Precinct Farmville A, Precinct Farmville B, Precinct Fountain, Precinct Greenville 01, Precinct Greenville 03, Precinct Greenville 04: Tract 6: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3011, Block 3012, Block 3013, Block 3014, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3999;

Block Group 4: Block 4005, Block 4011, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4067; Tract 7.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044; Tract 7.02: Block Group 1, Block Group 2; Precinct Greenville 05A, Precinct Greenville 05B: Tract 7.01: Block Group 1, Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033; Block Group 3: Block 3013, Block 3014, Block 3015, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3045, Block 3046; Precinct Greenville 06: Tract 1: Block Group 3: Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3062, Block 3063, Block 3064, Block 3065; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030; Block Group 5: Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5018, Block 5019, Block 5020, Block 5021, Block 5023; Precinct Greenville 12A: Tract 6: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016.

District 9: Pitt County: Precinct Arthur: Tract 6: Block Group 2: Block 2018, Block 2021; Tract 16: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020; Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2049, Block 2050, Block 2054; Block Group 3: Block 3005, Block 3006; Tract 17: Block Group 1: Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1066, Block 1067, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074; Tract 18: Block Group 4: Block 4000; Precinct Ayden A, Precinct Ayden B, Precinct Chicod, Precinct Greenville 04: Tract 6: Block Group 3: Block 3015, Block 3032, Block 3036, Block 3037, Block 3038; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4065, Block 4066; Tract 16: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Tract 17: Block Group 1: Block 1043, Block 1044, Block 1045, Block 1046; Precinct Greenville 05B: Tract 5: Block Group 1: Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042; Precinct Greenville 06: Tract 1: Block Group 3: Block 3034, Block 3035, Block 3036, Block 3037, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3050, Block 3051, Block 3052, Block 3053, Block 3061, Block 3066, Block 3067; Block Group 4: Block 4031; Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5016, Block 5017, Block 5022; Tract 4: Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016; Tract 5: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1017, Block 1018; Precinct Greenville 07A, Precinct Greenville 07B, Precinct Greenville 07C, Precinct Greenville 09: Tract 1: Block Group 5: Block 5024, Block 5025; Tract 2: Block Group 5: Block 5022, Block 5023, Block 5024, Block 5025; Tract 3: Block Group 2: Block 2014, Block 2017, Block 2018, Block 2019, Block 2037; Tract 4: Block Group 3: Block 3005, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Block Group 4: Block 4004, Block 4005; Precinct Greenville 10A, Precinct Greenville 11A, Precinct Greenville 11B, Precinct Greenville 12A: Tract 6: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2017, Block 2019, Block 2020, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044; Tract 16: Block Group 2: Block 2035, Block 2036; Precinct Greenville 12B, Precinct Grifton, Precinct Swift Creek, Precinct Winterville Central A, Precinct Winterville Central B, Precinct Winterville East.

District 10: Greene County, Lenoir County: Precinct Contentnea, Precinct Falling Creek: Tract 107: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3024, Block 3998; Tract 110: Block Group 1: Block 1029, Block 1030; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2018, Block 2019, Block 2020; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3999; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4999; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046, Block 6047, Block 6995, Block 6996, Block 6997, Block 6998, Block 6999; Tract 113: Block Group

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Precinct River Bend: Tract 9604: Block Group 7: Block 7003, Block 7017, Block 7018, Block 7050, Block 7993, Block 7998; Precinct Trent Woods: Tract 9604: Block Group 6: Block 6036, Block 6997; Lenoir County: Precinct Falling Creek: Tract 110: Block Group 2: Block 2017; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Block Group 5: Block 5000, Block 5001; Precinct Kinston 1, Precinct Kinston 2, Precinct Kinston 3: Tract 106: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 4: Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026; Tract 107: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2047, Block 2048, Block 2049, Block 2056, Block 2996; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046; Precinct Kinston 4: Tract 108: Block Group 1: Block 1018, Block 1019; Precinct Kinston 5: Tract 106: Block Group 2: Block 2000, Block 2002, Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2035, Block 2036, Block 2037, Block 2038; Block Group 3: Block 3005, Block 3006, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014; Precinct Kinston 6: Tract 101: Block Group 4: Block 4003, Block 4007, Block 4008, Block 4009, Block 4011, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Tract 105: Block Group 1, Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004; Block Group 4: Block 4000, Block 4001, Block 4002; Precinct Kinston 7, Precinct Kinston 8, Precinct Kinston 9, Precinct Neuse: Tract 103: Block Group 1: Block 1998, Block 1999; Tract 107: Block Group 2: Block 2997, Block 2998, Block 2999; Block Group 3: Block 3999; Tract 113: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Block Group 3: Block 3018, Block 3019; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4032, Block 4987, Block 4988, Block 4997, Block 4998, Block 4999; Block Group 5: Block 5000, Block 5018; Precinct Sandhill: Tract 114: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1998; Precinct Southwest: Tract 114: Block Group 2: Block 2000, Block 2014, Block 2015, Block 2999; Precinct Vance: Tract 108: Block Group 1: Block 1010, Block 1011, Block 1012; Tract 109: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1012, Block 1013, Block 1014, Block 1015; Block Group 2: Block 2003, Block 2004, Block

2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024.

District 13: Carteret County, Jones County.

District 14: Onslow County: Precinct Bear Creek, Precinct Brynn Marr, Precinct Half Moon, Precinct Hubert, Precinct Mills, Precinct Mortons, Precinct New River, Precinct Northeast, Precinct Northwoods East, Precinct precincts not defined 1, Precinct Swansboro.

District 15: Onslow County: Precinct Cross Roads, Precinct Folkstone, Precinct Haws Run, Precinct Holly Ridge, Precinct Jacksonville, Precinct Nine Mile, Precinct Northwoods West, Precinct precincts not defined 2, Precinct Sneads Ferry, Precinct Verona.

District 16: New Hanover County: Precinct Harnett 2 & 8, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7, Precinct Harnett 9; Pender County.

District 17: Brunswick County: Precinct Belville, Precinct Boiling Spring Lakes, Precinct Bolivia, Precinct Frying Pan, Precinct Grissettown, Precinct Hood Creek, Precinct Leland, Precinct Longwood Tract 205.01: Block Group 2: Block 2011, Block 2084, Block 2085; Tract 206: Block Group 2: Block 2332, Block 2350, Block 2351, Block 2352, Block 2353; Precinct Mosquito, Precinct Oak Island 1, Precinct Oak Island 2, Precinct Oak Island 3, Precinct Secession 1, Precinct Secession 2, Precinct Shallotte: Tract 204.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, lock 3040, Block 3041, Block 3042, Block 3043, Block 3051, Block 3075, Block 3076, Block 3997, Block 3998; Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068, Block 5069, Block 5072, Block 5073, Block 5074, Block 5075, Block 5076, Block 5077, Block 5998, Block 5999; Tract 206: Block Group 2: Block 2277, Block 2278, Block 2279, Block 2281, Block 2282, Block 2283, Block 2284, Block 2285, Block 2286, Block 2287, Block 2288, Block 2291, Block 2292, Block 2293, Block 2294, Block 2295, Block 2296, Block 2297, Block 2298, Block 2300, Block 2301, Block 2302, Block 2310, Block 2311, Block 2312, Block 2313, Block 2314, Block 2315, Block 2316, Block 2317, Block 2318, Block 2319, Block 2320, Block 2321, Block 2322, Block 2323, Block 2324, Block 2325, Block 2326, Block 2327, Block 2328, Block 2329, Block 2330, Block 2331, Block 2334, Block 2335, Block 2336, Block 2337, Block 2338, Block 2339, Block 2340, Block 2341, Block 2342, Block 2343, Block 2344, Block 2345, Block 2346, Block 2347, Block 2348, Block 2349; Precinct Shingletree 1, Precinct Shingletree 2, Precinct Southport 1, Precinct Southport 2, Precinct Supply: Tract 204.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025; Block Group 4; Precinct Towncreek, Precinct Woodburn.

District 18: New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2, Precinct Cape Fear 3, Precinct Harnett 1, Precinct Harnett 4, Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct

Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12, Precinct Wilmington 13, Precinct Wilmington 15, Precinct Wilmington 18, Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24.

District 19: New Hanover County: Precinct Federal Point 1, Precinct Federal Point 2, Precinct Federal Point 3, Precinct Federal Point 4, Precinct Federal Point 5, Precinct Harnett 3, Precinct Masonboro 2, Precinct Masonboro 3, Precinct Masonboro 4, Precinct Masonboro 5, Precinct Wilmington 04, Precinct Wilmington 05, Precinct Wilmington 11, Precinct Wilmington 14, Precinct Wilmington 16, Precinct Wilmington 17, Precinct Wilmington 19, Precinct Wilmington 20, Precinct Wilmington 21, Precinct Wrightsville Beach.

District 20: Brunswick County: Precinct Longwood: Tract 205.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1998; Block Group 2: Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2075, Block 2086, Block 2087, Block 2998; Tract 205.02: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2017, Block 2018; Tract 206: Block Group 2: Block 2245, Block 2246, Block 2247, Block 2248, Block 2333; Precinct Shallotte: Tract 204.01: Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5017, Block 5023, Block 5024, Block 5025, Block 5070, Block 5071; Tract 206: Block Group 2: Block 2090, Block 2091, Block 2092, Block 2128, Block 2133, Block 2134, Block 2135, Block 2136, Block 2137, Block 2138, Block 2139, Block 2140, Block 2141, Block 2142, Block 2143, Block 2144, Block 2145, Block 2146, Block 2147, Block 2148, Block 2149, Block 2150, Block 2151, Block 2152, Block 2153, Block 2154, Block 2155, Block 2156, Block 2157, Block 2165, Block 2166, Block 2167, Block 2168, Block 2169, Block 2170, Block 2171, Block 2172, Block 2173, Block 2174, Block 2175, Block 2176, Block 2177, Block 2178, Block 2179, Block 2180, Block 2181, Block 2182, Block 2183, Block 2184, Block 2185, Block 2186, Block 2187, Block 2188, Block 2189, Block 2190, Block 2196, Block 2197, Block 2198, Block 2199, Block 2200, Block 2201, Block 2202, Block 2203, Block 2204, Block 2205, Block 2206, Block 2207, Block 2208, Block 2209, Block 2210, Block 2211, Block 2212, Block 2213, Block 2214, Block 2215, Block 2216, Block 2217, Block 2218, Block 2219, Block 2220, Block 2221, Block 2222, Block 2223, Block 2224, Block 2225, Block 2226, Block 2227, Block 2228, Block 2229, Block 2230, Block 2231, Block 2232, Block 2233, Block 2237, Block 2238, Block 2249, Block 2250, Block 2251, Block 2252, Block 2253, Block 2254, Block 2255, Block 2258, Block 2259, Block 2260, Block 2261, Block 2275, Block 2276, Block 2280, Block 2289, Block 2290, Block 2299, Block 2303, Block 2304, Block 2305, Block 2306, Block 2307, Block 2308, Block 2309, Block 2354, Block 2355, Block 2356, Block 2357, Block 2358, Block 2359, Block 2362, Block

2363; Precinct Supply: Tract 204.01: Block Group 5: Block 5000, Block 5001, Block 5002; Tract 206: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2028, Block 2093, Block 2094, Block 2095, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2129, Block 2130, Block 2131, Block 2132, Block 2256, Block 2257, Block 2262, Block 2263, Block 2264, Block 2265, Block 2266, Block 2267, Block 2268, Block 2269, Block 2270, Block 2271, Block 2272, Block 2273, Block 2274, Block 2360, Block 2361, Block 2364; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3088, Block 3089, Block 3090; Block Group 4: Block 4044, Block 4047, Block 4048, Block 4052, Block 4053, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4085, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4143, Block 4144, Block 4145, Block 4146, Block 4147, Block 4148, Block 4149, Block 4150, Block 4151, Block 4152, Block 4153, Block 4154, Block 4155, Block 4156, Block 4157, Block 4158, Block 4159, Block 4160, Block 4161, Block 4162, Block 4163, Block 4164, Block 4165, Block 4166, Block 4167, Block 4168, Block 4169, Block 4170, Block 4171, Block 4172, Block 4173, Block 4174, Block 4175, Block 4176, Block 4177, Block 4178, Block 4179, Block 4180, Block 4181, Block 4182, Block 4183, Block 4184, Block 4185, Block 4186, Block 4187, Block 4188, Block 4189; Precinct Waccamaw; Columbus County.

District 21: Sampson County: Precinct Clinton Central, Precinct Clinton East, Precinct Clinton Northeast, Precinct Clinton Southwest, Precinct Clinton West, Precinct Garland, Precinct Giddensville, Precinct Harrells, Precinct Ingold, Precinct Keener, Precinct Kitty Fork: Tract 9702: Block Group 4: Block 4027, Block 4028, Block 4036, Block 4037, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051; Tract 9705: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1007, Block 1015, Block 1016, Block 1017, Block 1022, Block 1023; Tract 9706: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003; Precinct Lakewood, Precinct Newton Grove: Tract 9701: Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4019, Block 4020, Block 4024, Block 4025; Tract 9702: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1036, Block 1037, Block 1038, Block 1039; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2069, Block 2070, Block 2071, Block 2999; Precinct Roseboro: Tract 9704: Block Group 1: Block 1023, Block 1024, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042; Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2034, Block 2039, Block 2042, Block 2050, Block 2051, Block 2052; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Precinct Rowan, Precinct Salemburg: Tract 9705: Block Group 1: Block 1014, Block 1033, Block 1034, Block 1035, Block 1036, Block 1998, Block 1999; Block Group 2: Block 2026, Block 2027, Block 2029; Precinct Turkey; Wayne County: Precinct 10: Tract 12: Block Group 1: Block 1028, Block 1029, Block 1039, Block 1040, Block 1081, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Tract 18: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074; Precinct 11: Tract 12: Block Group 1: Block 1017, Block 1018, Block 1036, Block 1037, Block 1038, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1082; Tract 18: Block Group 1: Block 1000; Tract 19: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1016, Block 1022, Block 1023; Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21: Tract 14: Block Group 1: Block 1013, Block 1014, Block 1029, Block 1030, Block 1033, Block 1041, Block 1042, Block 1045, Block 1046, Block 1047, Block 1051; Block Group 3: Block 3003, Block 3009, Block 3010, Block 3012, Block 3014, Block 3015, Block 3016, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029; Precinct 23: Tract 4: Block

Group 1: Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1019, Block 1020, Block 1021, Block 1022, Block 1025, Block 1026; Tract 13: Block Group 3: Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct 24: Tract 10: Block Group 2: Block 2040, Block 2041, Block 2042, Block 2043, Block 2044; Precinct 25: Tract 8: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Block Group 3: Block 3019, Block 3028, Block 3029, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3050; Tract 9: Block Group 7: Block 7037, Block 7038, Block 7039, Block 7040; Tract 10: Block Group 1: Block 1026; Precinct 26: Tract 6.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1014, Block 1015, Block 1016, Block 1017; Tract 9: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4021, Block 4022, Block 4023; Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5995, Block 5996; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7041; Precinct 27: Tract 6.01: Block Group 1: Block 1000, Block 1006, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1020, Block 1021, Block 1022, Block 1998, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3008, Block 3009; Tract 6.02: Block Group 2: Block 2027, Block 2997; Tract 9: Block Group 4: Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5997, Block 5998, Block 5999; Precinct 28: Tract 7: Block Group 3: Block 3002, Block 3033; Precinct 29: Tract 15: Block Group 1: Block 1001, Block 1002, Block 1003; Tract 18: Block Group 1: Block 1047, Block 1048, Block 1057, Block 1058, Block 1059, Block 1061, Block 1062; Precinct 30.

District 22: Bladen County, Cumberland County: Precinct Alderman, Precinct Beaver Dam & Cedar Creek, Precinct Cumberland 1, Hope Mills 1, & Stoney Point: Tract 16.01: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2043; Block Group 3: Block 3024; Tract 19.01: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040; Tract 31: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1064, Block 1065, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3010, Block 3011, Block 3012, Block 3013, Block

3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3034, Block 3035, Block 3995, Block 3996, Block 3997; Block Group 4: Block 4026; Tract 32.01: Block Group 1: Block 1026, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1998; Block Group 2, Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034; Tract 32.04: Block Group 4: Block 4014; Precinct Hope Mills 2: Tract 16.01: Block Group 1: Block 1030, Block 1032, Block 1033, Block 1034, Block 1993, Block 1995, Block 1999; Block Group 2: Block 2996; Block Group 4: Block 4998, Block 4999; Tract 30: Block Group 1: Block 1007, Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2012, Block 2013; Block Group 5: Block 5014, Block 5015, Block 5019, Block 5020; Tract 31: Block Group 3: Block 3000, Block 3009, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3994, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4021, Block 4023, Block 4024, Block 4025, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4992, Block 4994, Block 4997, Block 4998, Block 4999; Precinct Judson-Vander: Tract 28: Block Group 3: Block 3027, Block 3028, Block 3029, Block 3030, Block 3999; Precinct Sherwood, Precinct Stedman: Tract 28: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Tract 29: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1013.

District 23: Edgecombe County: Precinct Battleboro, Precinct Conetoe, Precinct Lawrence, Precinct Leggett, Precinct Lewis, Precinct Macclesfield, Precinct Old Sparta, Precinct Pinetops, Precinct Speed, Precinct Tarboro 1, Precinct Tarboro 2, Precinct Tarboro 3, Precinct Tarboro 4, Precinct Whitakers; Wilson County: Precinct Black Creek, Precinct Crossroads, Precinct Gardners, Precinct Oldfields, Precinct Saratoga, Precinct Spring Hill, Precinct Stantonsburg, Precinct Taylors, Precinct Wilson I, Precinct Wilson J.

District 24: Edgecombe County: Precinct Rocky Mount 1, Precinct Rocky Mount 2, Precinct Rocky Mount 4, Precinct Rocky Mount 5, Precinct Sharpsburg, Precinct Temperance Hall, Precinct West Edgecombe; Wilson County: Precinct Toisnot, Precinct Wilson A, Precinct Wilson B, Precinct Wilson C, Precinct Wilson D, Precinct Wilson E, Precinct Wilson F, Precinct Wilson G, Precinct Wilson H, Precinct Wilson K, Precinct Wilson L, Precinct Wilson M, Precinct Wilson N, Precinct Wilson P, Precinct Wilson Q.

District 25: Nash County: Precinct Bailey, Precinct Castalia, Precinct Coopers, Precinct Drywells, Precinct Ferrells, Precinct Griffins: Tract 108: Block Group 1: Block 1064, Block 1065; Tract 109: Block Group 1: Block 1029, Block 1030, Block 1031, Block 1034, Block 1035, Block 1036, Block 1038, Block 1039; Block Group 2: Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4040, Block 4043, Block 4044, Block 4045, Block 4046, Block 4999; Precinct Jacksons, Precinct Mannings 1, Precinct Mannings 2, Precinct Nashville, Precinct Oak Level, Precinct Red Oak, Precinct Rocky Mount 04: Tract 102: Block Group 3: Block 3000, Block 3003, Block 3007, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024; Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5012, Block 5013; Tract 103: Block Group 4: Block 4012, Block 4013, Block 4019, Block 4020, Block 4021, Block 4022; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5004; Block Group 6: Block 6020, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046; Precinct Rocky Mount 05, Precinct Rocky Mount 06, Precinct Rocky Mount 07, Precinct Rocky Mount 08, Precinct Rocky Mount 09, Precinct Stony Creek, Precinct Whitakers North 2.

District 26: Johnston County: Precinct Beulah North, Precinct Beulah South, Precinct Clayton East, Precinct Clayton North, Precinct Clayton South, Precinct Clayton West, Precinct Micro, Precinct Oneals North, Precinct Oneals South, Precinct Pine Level: Tract 403: Block Group 2: Block 2020, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062; Block Group 4: Block 4000, Block 4012, Block 4013, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4083, Block 4084; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6033; Tract 404: Block Group 1, Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3017, Block 3018, Block 3019, Block 3021, Block 3022, Block 3023; Precinct Selma East, Precinct Selma West, Precinct Smithfield East: Tract 406: Block Group 1, Block Group 2: Block 2012, Block 2013, Block 2014, Block 2016; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025; Tract 407: Block Group 2:

Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2027, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Block Group 3: Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3046, Block 3047, Block 3048; Tract 408: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1043, Block 1044, Block 1045; Tract 412: Block Group 2: Block 2000; Precinct Smithfield North, Precinct Smithfield South: Tract 408: Block Group 1: Block 1005, Block 1006, Block 1019, Block 1030, Block 1031, Block 1040, Block 1041; Block Group 2, Block Group 3; Tract 409: Block Group 4: Block 4027, Block 4028; Tract 412: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016; Block Group 2: Block 2001; Precinct Wilders North, Precinct Wilders South, Precinct Wilsons Mills.

District 27: Northampton County, Vance County: Precinct Dabney, Precinct Henderson East 1, Precinct Henderson East 2, Precinct Henderson North 1, Precinct Henderson North 2, Precinct Henderson West 1, Precinct Henderson West 2, Precinct Middleburg, Precinct Townsville, Precinct Williamsboro; Warren County.

District 28: Johnston County: Precinct Banner North, Precinct Banner South, Precinct Banner West, Precinct Bentonville, Precinct Boon Hill North, Precinct Boon Hill South, Precinct Cleveland North, Precinct Cleveland South, Precinct Elevation North, Precinct Elevation South, Precinct Ingrams East, Precinct Ingrams West, Precinct Meadow North, Precinct Meadow South, Precinct Pine Level: Tract 404: Block Group 3: Block 3016, Block 3020, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039; Tract 407: Block Group 2: Block 2000, Block 2047; Precinct Pleasant Grove North, Precinct Pleasant Grove South, Precinct Smithfield East: Tract 406: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3019, Block 3026, Block 3027, Block 3028; Tract 407: Block Group 2: Block 2026, Block 2032, Block 2033, Block 2034, Block 2046; Tract 412: Block Group 2: Block 2007, Block 2008, Block 2999; Block Group 5: Block 5000, Block 5002; Precinct Smithfield South: Tract 409: Block Group 4: Block 4025, Block 4026; Block Group 5: Block 5050, Block 5051, Block 5052, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068; Tract 412: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1013, Block 1998, Block 1999; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2993, Block 2998; Tract 415: Block Group 3: Block 3024; Sampson County: Precinct Autryville, Precinct Clement, Precinct Herring, Precinct Kitty Fork: Tract 9702: Block Group 4: Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4038; Tract 9705: Block Group 1: Block 1006, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Block Group 2: Block 2011; Precinct Mingo, Precinct Newton Grove: Tract 9702:

Block Group 1: Block 1019, Block 1020, Block 1021; Block Group 2: Block 2006, Block 2009, Block 2062, Block 2063, Block 2064, Block 2066, Block 2067, Block 2068; Block Group 3: Block 3000, Block 3001, Block 3021, Block 3022, Block 3023; Precinct Plainview, Precinct Roseboro: Tract 9704: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1014, Block 1026, Block 1027; Block Group 3: Block 3006, Block 3007, Block 3048, Block 3049, Block 3050, Block 3053; Block Group 4: Block 4025, Block 4026, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045; Tract 9709: Block Group 1: Block 1036; Precinct Salemburg: Tract 9704: Block Group 1: Block 1000, Block 1001; Tract 9705: Block Group 2: Block 2013, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3062, Block 3065, Block 3066, Block 3067, Block 3071, Block 3073, Block 3074, Block 3075; Precinct Westbrook.

District 29: Durham County: Precinct 07, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 16, Precinct 17, Precinct 27, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42, Precinct 48, Precinct 49, Precinct 51, Precinct 53, Precinct 54: Tract 20.12: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3029, Block 3999.

District 30: Durham County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 05, Precinct 06, Precinct 24, Precinct 36, Precinct 37, Precinct 43, Precinct 44, Precinct 45: Tract 16.01: Block Group 2: Block 2007; Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Tract 16.03: Block Group 1, Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Tract 16.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1032, Block 1033, Block 1034; Block Group 2: Block 2037, Block 2043, Block 2044, Block 2046, Block 2047, Block 2048; Precinct 46, Precinct 50.

District 31: Durham County: Precinct 14, Precinct 15, Precinct 18, Precinct 19, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 47, Precinct 52, Precinct 54: Tract 20.14: Block Group 1: Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1064.

District 32: Granville County, Vance County: Precinct Henderson South 1, Precinct Henderson South 2, Precinct Hilltop, Precinct Kittrell, Precinct Sandy Creek, Precinct Watkins.

District 33: Wake County: Precinct 01-12: Tract 518: Block Group 1: Block 1007, Block 1008, Block 1009; Block Group 3: Block 3000, Block 3001, Block 3008, Block 3018; Tract 527.01: Block Group 2: Block 2028, Block 2029, Block 2030, Block 2031, Block 2036, Block 2037, Block 2038, Block 2039; Precinct

01-13, Precinct 01-19, Precinct 01-20, Precinct 01-22, Precinct 01-28, Precinct 01-34, Precinct 01-38, Precinct 01-40, Precinct 01-46, Precinct 13-01: Tract 527.04: Block Group 1: Block 1000, Block 1028; Tract 325.02, Tract 540.10: Block Group 2: Block 2007, Block 2015, Block 2016, Block 2017, Block 2018, Block 2024, Block 2029, Block 2030, Block 2031; Tract 541.04: Block Group 1: Block 1010, Block 1016, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1058; Precinct 13-07: Tract 540.09: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 2: Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2128, Block 2129, Block 2130; Precinct 17-01, Precinct 17-03, Precinct 17-05, Precinct 17-07, Precinct 17-09, Precinct 17-10, Precinct 17-11.

District 34: Wake County: Precinct 01-10, Precinct 01-11, Precinct 01-15, Precinct 01-17, Precinct 01-18, Precinct 01-30, Precinct 01-36, Precinct 01-37, Precinct 01-39, Precinct 01-42, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-51, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-06, Precinct 07-09, Precinct 07-11, Precinct 07-13, Precinct 13-02, Precinct 13-05, Precinct 13-06.

District 35: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-03, Precinct 01-04, Precinct 01-16, Precinct 01-29, Precinct 01-31, Precinct 01-32, Precinct 01-33, Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-02, Precinct 04-05, Precinct 04-08, Precinct 04-11, Precinct 04-17, Precinct 04-18, Precinct 04-21, Precinct 07-01: Tract 525.01: Block Group 1: Block 1016, Block 1017; Precinct 11-01, Precinct 11-02, Precinct 18-06: Tract 530.02: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1012.

District 36: Wake County: Precinct 04-01, Precinct 04-03, Precinct 04-04, Precinct 04-06, Precinct 04-07, Precinct 04-10, Precinct 04-12, Precinct 04-14, Precinct 04-15, Precinct 04-16, Precinct 04-20, Precinct 18-02, Precinct 18-03, Precinct 18-04: Tract 530.01: Block Group 1: Block 1000, Block 1010, Block 1011, Block 1012, Block 1998, Block 1999; Precinct 18-05, Precinct 18-06: Tract 523.01: Block Group 1: Block 1003, Block 1005, Block 1006, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 524.04: Block Group 1: Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 530.01: Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Tract 530.02: Block Group 1: Block 1000, Block 1001, Block 1002,Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1049, Block 1050, Block 1057, Block 1058, Block 1993, Block 1994, Block 1998, Block 1999; Precinct 18-07, Precinct 18-08, Precinct 20-03, Precinct 20-05, Precinct 20-09.

District 37: Wake County: Precinct 03-00, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 15-01, Precinct 15-02: Tract 529: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2027, Block 2031, Block 2032, Block 2033; Tract 531.03: Block Group 1: Block 1000, Block 1021, Block 1022, Block 1023; Precinct 15-03, Precinct 20-01, Precinct 20-06, Precinct 20-07: Tract 534.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block

1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1034, Block 1035, Block 1036, Block 1039, Block 1040, Block 1041, Block 1077, Block 1078; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4017, Block 4039, Block 4040, Block 4041, Block 4042, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4077, Block 4078, Block 4080, Block 4081, Block 4147, Block 4148; Precinct 20-08.

District 38: Wake County: Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-12: Tract 517: Block Group 1: Block 1008; Tract 518: Block Group 1: Block 1010, Block 1011, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Precinct 01-14, Precinct 01-21, Precinct 01-23, Precinct 01-25, Precinct 01-26, Precinct 01-27, Precinct 01-35, Precinct 01-50, Precinct 15-02: Tract 530.02: Block Group 4; Precinct 15-04, Precinct 16-02: Tract 522.02: Block Group 1: Block 1046, Block 1047, Block 1048, Block 1049, Block 1054, Block 1055, Block 1057, Block 1058, Block 1066, Block 1067, Block 1068, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1081, Block 1082, Block 1083, Block 1084; Tract 528.03: Block Group 4: Block 4002; Precinct 16-03, Precinct 16-05, Precinct 16-06: Tract 528.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Block Group 4; Precinct 16-07, Precinct 18-01, Precinct 18-04: Tract 528.02: Block Group 1: Block 1007, Block 1008; Tract 530.01: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029; Tract 530.02: Block Group 1: Block 1047, Block 1048, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1992; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 5: Block 5000, Block 5001, Block 5010.

District 39: Wake County: Precinct 09-01, Precinct 09-02, Precinct 09-03, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 13-01: Tract 541.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1040; Precinct 13-03: Tract 540.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2100; Precinct 13-07: Tract 540.09: Block Group 2: Block 2099, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111; Precinct 16-01, Precinct 16-02: Tract 521.01: Block Group 2: Block 2034; Tract 528.03: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075; Block Group 3, Block Group 4: Block 4000, Block 4001, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008; Tract 528.04: Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3999; Precinct 16-04, Precinct 16-06: Tract 528.05: Block Group 2, Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3999; Block Group 4; Precinct 16-08, Precinct 16-09, Precinct 17-02, Precinct 17-04, Precinct 17-06, Precinct 17-08, Precinct 19-08: Tract 541.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1999.

District 40: Wake County: Precinct 01-47, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 07-05, Precinct 08-04, Precinct 08-05, Precinct 08-07, Precinct 08-08, Precinct 13-03: Tract 540.09: Block Group 2: Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087; Precinct 13-04, Precinct 14-01, Precinct 14-02, Precinct 19-01, Precinct 19-02, Precinct 19-03, Precinct 19-04, Precinct 19-05, Precinct 19-06, Precinct 19-07, Precinct 19-08: Tract 542.02: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4024, Block 4025, Block 4026, Block 4997, Block 4998.

District 41: Wake County: Precinct 04-09, Precinct 04-13, Precinct 04-19, Precinct 05-01, Precinct 05-02, Precinct 05-03, Precinct 07-01: Tract 525.01: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Precinct 07-07, Precinct 07-10, Precinct 07-12, Precinct 08-01, Precinct 08-02, Precinct 08-03, Precinct 08-06, Precinct 08-09, Precinct 20-02, Precinct 20-04, Precinct 20-07: Tract 534.03: Block Group 1: Block 1037, Block 1038, Block 1079, Block 1080; Block Group 2: Block 2053, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072; Block Group 4: Block 4012, Block 4043, Block 4044; Precinct 20-10.

District 42: Cumberland County: Precinct Auman, Precinct Cliffdale West, Precinct Cross Creek 17, Precinct Cross Creek 27: Tract 33.07: Block Group 2: Block 2000; Tract 33.08: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014; Precinct Cross Creek 28: Tract 32.03: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1014, Block 1015; Tract 32.04: Block Group 1: Block 1001; Tract 32.05: Block Group 2: Block 2000, Block 2001, Block 2003, Block 2004; Tract 33.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block

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District 43: Cumberland County: Precinct Cross Creek 01, Precinct Cross Creek 03: Tract 22: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2023, Block 2024; Tract 23: Block Group 1, Block

Group 9: Block 9001, Block 9002, Block 9003, Block 9998; Precinct Cross Creek 05, Precinct Cross Creek 09, Precinct Cross Creek 13, Precinct Cross Creek 16, Precinct Cross Creek 19, Precinct Cross Creek 21, Precinct Cross Creek 23: Tract 25.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1011; Block Group 9: Block 9074, Block 9075; Precinct Cross Creek 26: Tract 33.04: Block Group 2: Block 2000, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3010; Precinct Cross Creek 33, Precinct Long Hill: Tract 25.04: Block Group 2: Block 2002, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028; Precinct Manchester: Tract 34: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2051, Block 2052, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2091; Precinct Westarea: Tract 24: Block Group 1: Block 1007; Block Group 2: Block 2000, Block 2001; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4018, Block 4019; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5011; Tract 25.01: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 9: Block 9000, Block 9001, Block 9002, Block 9003, Block 9004, Block 9006, Block 9010, Block 9011, Block 9016, Block 9017, Block 9018, Block 9019, Block 9020, Block 9024, Block 9044, Block 9076, Block 9077; Tract 25.02: Block Group 1: Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1015, Block 1016, Block 1017, Block 1019, Block 1022, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1034, Block 1035, Block 1036, Block 1997; Block Group 3: Block 3007, Block 3010, Block 3011, Block 3012, Block 3997; Tract 25.03: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030; Tract 25.04: Block Group 3.

District 44: Cumberland County: Precinct Arran Hills, Precinct Brentwood, Precinct Cross Creek 03: Tract 20: Block Group 1: Block 1001, Block 1002, Block 1003; Tract 22: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Precinct Cross Creek 04, Precinct Cross Creek 06, Precinct Cross Creek 07, Precinct Cross Creek 08, Precinct Cross Creek 12: Tract 7: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3033, Block 3034, Block 3999; Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Precinct Cross Creek 14, Precinct Cross Creek 15: Tract 6: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3011; Tract 18: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003; Block Group 2: Block 2000, Block 2001; Precinct Cross Creek 18: Tract 7: Block Group 4: Block 4007, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4023; Precinct Cross Creek 20, Precinct Cross Creek 24, Precinct Cross Creek 25, Precinct Cross Creek 26:

Tract 20: Block Group 2: Block 2997, Block 2998, Block 2999; Tract 33.04: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3999; Tract 33.09: Block Group 1, Block Group 2: Block 2999; Precinct Cross Creek 27: Tract 20: Block Group 2: Block 2996; Tract 33.08: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Tract 33.09: Block Group 2: Block 2998; Precinct Cross Creek 28: Tract 32.03: Block Group 1: Block 1001, Block 1002, Block 1051, Block 1052, Block 1053, Block 1054; Tract 33.02: Block Group 3: Block 3003, Block 3004, Block 3005, Block 3010, Block 3011, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Precinct Cross Creek 29, Precinct Cross Creek 30, Precinct Cross Creek 31, Precinct Cross Creek 34, Precinct Cumberland 1, Hope Mills 1, & Stoney Point: Tract 19.03: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Tract 32.03: Block Group 2: Block 2015, Block 2016, Block 2017; Tract 32.04: Block Group 4: Block 4012, Block 4013; Precinct Cumberland 2, Precinct Morganton Rd 2, Precinct Pearces Mill 4: Tract 17: Block Group 1: Block 1031.

District 45: Cumberland County: Precinct Black River, Precinct Cross Creek 02, Precinct Cross Creek 10, Precinct Cross Creek 11, Precinct Cross Creek 12: Tract 7: Block Group 3: Block 3017, Block 3998; Precinct Cross Creek 15: Tract 4: Block Group 1: Block 1044, Block 1045; Tract 6: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1008, Block 1009, Block 1999; Block Group 3: Block 3000, Block 3010; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4025, Block 4026, Block 4999; Precinct Cross Creek 18: Tract 4: Block Group 1: Block 1037, Block 1038, Block 1039, Block 1040, Block 1043; Tract 7: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026; 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Tract 37: Block Group 1: Block 1096; Precinct Cumberland 1, Hope Mills 1, & Stoney Point: Tract 16.01: Block Group 2: Block 2001, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2025, Block 2026, Block 2027, Block 2998; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023; Tract 16.02: Block Group 1: Block 1061, Block 1998; Tract 19.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1014; Tract 19.02: Block Group 1: Block 1059; Tract 31: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1066; Tract 32.01: Block Group 3: Block 3001; Precinct Cumberland 3, Precinct Eastover, Precinct Hope Mills 2: Tract 15: Block Group 2: Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2032, Block 2998, Block 2999; Tract 16.01: Block Group 1: Block 1000, Block 1001, Block 1027; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020; Tract 30: Block Group 1: Block 1009, Block 1020, Block 1998, Block 1999; Precinct Hope Mills 3, Precinct Judson-Vander: Tract 14: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1030, Block 1031, Block 1032, Block 1035, Block 1036; Block Group 2: Block 2047, Block 2048; Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4033, Block 4034, Block 4036, Block 4044, Block 4045; 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District 46: Hoke County: Precinct Buchan, Precinct Mccain: Tract 9701: Block Group 5: Block 5003, Block 5004, Block 5005; Tract 9702: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1045, Block 1994; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2045, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2128, Block 2129, Block 2130, Block 2131, Block 2132, Block 2133, Block 2134, Block 2135, Block 2136, Block 2137, Block 2138, Block 2139, Block 2140, Block 2141, Block 2142, Block 2143, Block 2144, Block 2145, Block 2146, Block 2147; 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4127, Block 4128, Block 4129, Block 4130, Block 4131, Block 4132, Block 4133, Block 4134, Block 4135, Block 4136, Block 4137, Block 4138, Block 4139, Block 4140, Block 4141, Block 4142, Block 4143, Block 4144, Block 4145, Block 4146, Block 4147, Block 4148, Block 4149, Block 4150, Block 4151, Block 4152, Block 4153, Block 4154, Block 4155, Block 4156, Block 4157, Block 4158, Block 4159, Block 4160, Block 4161, Block 4162, Block 4163, Block 4164, Block 4165, Block 4166, Block 4167, Block 4168, Block 4169, Block 4170, Block 4171, Block 4172, Block 4173, Block 4174, Block 4175, Block 4176, Block 4177, Block 4178, Block 4179, Block 4180, Block 4181, Block 4182, Block 4183, Block 4184, Block 4185, Block 4186, Block 4187, Block 4188, Block 4189, Block 4190, Block 4191, Block 4192, Block 4193, Block 4194, Block 4195, Block 4196, Block 4197, Block 4198, Block 4199, Block 4200, Block 4201, Block 4202, Block 4203, Block 4204, Block 4205, Block 4206, Block 4207, Block 4208, Block 4209, Block 4210, Block 4211, Block 4212, Block 4213, Block 4214, Block 4215, Block 4216, Block 4217, Block 4218, Block 4219, Block 4220, Block 4221, Block 4993, Block 4995, Block 4996, Block 4997, Block 4998, Block 4999; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5030, Block 5036, Block 5037, Block 5046, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068, Block 5069, Block 5070, Block 5071, Block 5072, Block 5073, Block 5074, Block 5075, Block 5076, Block 5077, Block 5078, Block 5079, Block 5080, Block 5081, Block 5082, Block 5083, Block 5084, Block 5085, Block 5086, Block 5087, Block 5088, Block 5089, Block 5090, Block 5091, Block 5092, Block 5093, Block 5094, Block 5095, Block 5096, Block 5097, Block 5999; Precinct 09, Precinct 10.

District 47: Robeson County: Precinct Back Swamp: Tract 9605: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5040; Tract 9608: Block Group 1: Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1999; Block Group 4: Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091; Tract 9618: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2014, Block 2016, Block 2017, Block 2018, Block 2021, Block 2022, Block 2023, Block 2024, Block 2998, Block 2999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4049, Block 4050, Block 4051; Precinct Burnt Swamp, Precinct Lumber Bridge, Precinct Lumberton 1, Precinct Lumberton 2: Tract 9609: Block Group 1: Block 1000; Tract 9610: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038; Block Group 3: Block 3001, Block 3002; Tract 9612: Block Group 1: Block 1012, Block 1014;

Tract 9613: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Precinct Lumberton 7: Tract 9608: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1076, Block 1077, Block 1078, Block 1089, Block 1090, Block 1091; Block Group 2: Block 2016; Block Group 3: Block 3010; Precinct Lumberton 8, Precinct Oxendine, Precinct Pembroke North, Precinct Pembroke South, Precinct Philadelphus, Precinct Prospect, Precinct Raft Swamp, Precinct Red Springs 1, Precinct Red Springs 2, Precinct Rennert, Precinct Saddletree, Precinct Shannon, Precinct Smyrna: Tract 9616: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2010; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct Thompson, Precinct Union.

District 48: Hoke County: Precinct Allendale, Precinct Antioch, Precinct Blue Springs, Precinct Mccain: Tract 9702: Block Group 3: Block 3001, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062; Precinct Raeford 1, Precinct Raeford 2, Precinct Raeford 3, Precinct Raeford 4, Precinct Raeford 5, Precinct Stonewall: Tract 9704: Block Group 1: Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1031, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1997; Block Group 2: Block 2000; Robeson County: Precinct Alfordsville, Precinct Back Swamp: Tract 9618: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015, Block 2019, Block 2020; Precinct Britts, Precinct Fairmont 1, Precinct Fairmont 2, Precinct Gaddys, Precinct Lumberton 2: Tract 9612: Block Group 1: Block 1010, Block 1011, Block 1013, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1024, Block 1025; Precinct Lumberton 3: Tract 9610: Block Group 3: Block 3000; Tract 9612: Block Group 1: Block 1022, Block 1023, Block 1026, Block 1027, Block 1028, Block 1038, Block 1039; Precinct Lumberton 5, Precinct Lumberton 6, Precinct Lumberton 7: Tract 9608: Block Group 1: Block 1000, Block 1031, Block 1032, Block 1033, Block 1039, Block 1040, Block 1052, Block 1053, Block 1100; Block Group 2: Block 2015; Block Group 3: Block 3009, Block 3011; Precinct Maxton, Precinct Orrum, Precinct Rowland, Precinct Smyrna: Tract 9608: Block Group 4: Block 4051, Block 4052, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072; Tract 9616: Block Group 1: Block

1006; Block Group 2: Block 2011; Block Group 3: Block 3020, Block 3035, Block 3036, Block 3037, Block 3038; Precinct Sterlings, Precinct Whitehouse; Scotland County: Precinct 01, Precinct 02, Precinct 04: Tract 101: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036; Tract 103: Block Group 1: Block 1055, Block 1056; Precinct 06, Precinct 07, Precinct 08: Tract 102: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1006, Block 1010; Tract 106: Block Group 5: Block 5000, Block 5001, Block 5029, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5047, Block 5048, Block 5049.

District 49: Franklin County, Halifax County: Precinct Butterwood: Tract 9908: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016, Block 1017, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1999; Precinct Hollister: Tract 9908: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1035; Block Group 2: Block 2012; Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4018, Block 4019; Precinct Littleton 1: Tract 9907: Block Group 2: Block 2014, Block 2015, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2993; Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050; Block Group 4: Block 4002, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021; Tract 9908: Block Group 1: Block 1001, Block 1002, Block 1003; Precinct Littleton 2, Precinct Roanoke Rapids 01, Precinct Roanoke Rapids 02, Precinct Roanoke Rapids 03, Precinct Roanoke Rapids 04, Precinct Roanoke Rapids 05, Precinct Roanoke Rapids 06, Precinct Roanoke Rapids 11: Tract 9903: Block Group 1: Block 1999; Tract 9905: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1039, Block 1044, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2006, Block 2997, Block 2998, Block 2999; Tract 9907: Block Group 2: Block 2996; Nash County: Precinct Griffins: Tract 109: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1032, Block 1033, Block 1037, Block 1040, Block 1041, Block 1045, Block 1046.

District 50: Caswell County, Orange County: Precinct Caldwell, Precinct Cameron Park, Precinct Carr, Precinct Cedar Grove, Precinct Cheeks, Precinct Coles Store, Precinct Efland, Precinct Eno, Precinct Grady Brown, Precinct Hillsborough, Precinct Hillsborough West, Precinct Orange Grove, Precinct St Marys, Precinct Tolars.

District 51: Harnett County: Precinct Barbeque, Precinct Buckhorn, Precinct Johnsonville, Precinct U.L.R. 2; Lee County.

District 52: Moore County: Precinct Aberdeen East, Precinct Aberdeen West, Precinct Bensalem, Precinct Carthage: Tract 9501: Block Group 2: Block 2043, Block 2044, Block 2045, Block 2046, Block 2047; Block Group 3: Block 3022, Block 3023, Block 3024, Block 3029, Block 3033, Block 3034, Block 3035, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041; Tract 9503: Block Group 1: Block 1038, Block 1039; Block Group 2: Block 2010; Block Group 3: Block 3001, Block 3002; Tract 9504: Block Group 1: Block 1048, Block 1049, Block 1050, Block 1051; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037, Block 2038; Block Group 3, Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5020, Block 5021, Block 5027, Block 5028, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5039, Block 5040, Block 5041, Block 5042, Block 5072, Block 5073, Block 5074; Block Group 6: Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046, Block 6047, Block 6048, Block 6049, Block 6050, Block 6051, Block 6052, Block 6053, Block 6054, Block 6055, Block 6056, Block 6057, Block 6058, Block 6059, Block 6060, Block 6061, Block 6065, Block 6066, Block 6073, Block 6074, Block 6075, Block 6076, Block 6080, Block 6081, Block 6082, Block 6083, Block 6084, Block 6085; Tract 9505.01: Block Group 1: Block 1015, Block 1016, Block 1017; Tract 9505.02: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2019, Block 2020, Block 2021, Block 2995; Precinct Deep River/High Falls/Ritter, Precinct Eastwood, Precinct Eureka, Precinct Knollwood, Precinct Little River, Precinct Pinebluff, Precinct Pinedene, Precinct Pinehurst A, Precinct Pinehurst B, Precinct Pinehurst C, Precinct Robbins, Precinct Seven Lakes, Precinct Southern Pines North, Precinct Southern Pines South, Precinct Taylortown, Precinct Vass, Precinct West End, Precinct Westmoore.

District 53: Harnett County: Precinct Anderson Creek, Precinct Averasboro 1, Precinct Averasboro 2, Precinct Averasboro 3, Precinct Averasboro 4, Precinct Averasboro 5, Precinct Black River, Precinct Duke 1, Precinct Duke 2, Precinct Duke 3, Precinct Grove 1, Precinct Grove 2, Precinct Hectors Creek, Precinct Lillington, Precinct Neils Creek 1, Precinct Neils Creek 2, Precinct Stewarts Creek, Precinct U.L.R. 1.

District 54: Chatham County, Moore County: Precinct Cameron, Precinct Carthage: Tract 9501: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058; Block Group 2: Block 2000, Block 2001, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Tract 9504: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020, Block 1028, Block 1029, Block 1030, Block 1032, Block 1033, Block 1034, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1047, Block 1999; Block Group 2: Block 2035; Block Group 6: Block 6001, Block 6064; Orange County: Precinct Damascus, Precinct Dogwood Acres, Precinct Kings Mill, Precinct St John, Precinct White Cross.

District 55: Durham County: Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 25, Precinct 26, Precinct 28, Precinct 45: Tract 16.01: Block Group 1: Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Block Group 3: Block 3011, Block 3012, Block 3021; Tract 17.08: Block Group 1: Block 1003; Person County.

District 56: Orange County: Precinct Battle Park, Precinct Booker Creek, Precinct Carrboro, Precinct Carrboro North, Precinct Cedar Falls, Precinct Coker Hills, Precinct Colonial Heights, Precinct Country Club, Precinct Eastside, Precinct Estes Hills, Precinct Franklin East, Precinct Glenwood, Precinct Greenwood, Precinct Lincoln, Precinct Lions Club, Precinct Mason Farm, Precinct Northside, Precinct Owasa, Precinct Patterson, Precinct Ridgefield, Precinct Town Hall, Precinct Weaver Dairy, Precinct Weaver Dairy Satellite, Precinct Westwood.

District 57: Guilford County: Precinct Friendship 1, Precinct Friendship 2: Tract 164.03: Block Group 1: Block 1007, Block 1008, Block 1056; Tract 164.04: Block Group 1: Block 1000; Tract 165.03: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005; Precinct GB 15, Precinct GB 16, Precinct GB 33, Precinct GB 34, Precinct GB 35, Precinct GB 36, Precinct GB 37, Precinct GB 38, Precinct GB 39: Tract 125.06: Block Group 1: Block 1065, Block 1067; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007; Precinct GB 43, Precinct GB 47: Tract 116.01: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1029; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2013, Block 2014, Block 2020; Precinct GB 48, Precinct GB 49, Precinct GB 50, Precinct GB 51, Precinct GB 56, Precinct GB 58, Precinct GB 60, Precinct GB 61, Precinct GB 62, Precinct GB 63, Precinct GB 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4067; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct GB 65, Precinct

GB 66, Precinct HP: Tract 164.03: Block Group 1: Block 1009, Block 1031; Precinct Jamestown 3: Tract 126.09: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2025, Block 2029, Block 2030, Block 2033, Block 2045, Block 2047; Tract 165.02: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1013, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Tract 165.04: Block Group 1: Block 1058, Block 1064.

District 58: Guilford County: Precinct Clay North 1, Precinct Clay North 2, Precinct Clay South, Precinct Fentress 1, Precinct Fentress 2, Precinct GB 03, Precinct GB 04, Precinct GB 05, Precinct GB 06, Precinct GB 46: Tract 108.01: Block Group 1: Block 1067, Block 1073, Block 1079; Tract 113: Block Group 2: Block 2014, Block 2017, Block 2018; Tract 114: Block Group 1: Block 1001, Block 1002, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003; Precinct GB 52: Tract 113: Block Group 2: Block 2015, Block 2016, Block 2019, Block 2020, Block 2021; Precinct GB 53: Tract 128.04: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1027; Precinct GB 67, Precinct GB 68, Precinct GB 69, Precinct GB 70, Precinct GB 71, Precinct GB 72, Precinct GB 73, Precinct GB 74, Precinct GB 75, Precinct Gibsonville, Precinct Greene, Precinct Jefferson 1, Precinct Jefferson 2, Precinct Jefferson 3, Precinct Jefferson 4, Precinct Pleasant Garden 1: Tract 168: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Tract 169: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007; Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Washington South.

District 59: Guilford County: Precinct GB 01, Precinct GB 02, Precinct GB 07, Precinct GB 08, Precinct GB 09, Precinct GB 10, Precinct GB 11, Precinct GB 12, Precinct GB 13, Precinct GB 14, Precinct GB 17, Precinct GB 18, Precinct GB 19, Precinct GB 20, Precinct GB 21, Precinct GB 22, Precinct GB 23, Precinct GB 26, Precinct GB 31, Precinct GB 44, Precinct GB 45, Precinct Madison North, Precinct Madison South, Precinct Monroe 1, Precinct Monroe 2, Precinct Monroe 3, Precinct Washington North.

District 60: Guilford County: Precinct GB 46: Tract 113: Block Group 2: Block 2013; Tract 114: Block Group 1: Block 1008, Block 1015, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Block Group 2, Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011; Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005; Block Group 6; Tract 115: Block Group 1: Block 1000, Block 1001, Block 1012, Block 1013, Block 1014; Block Group 2: Block 2000, Block 2001; Precinct GB 47: Tract 115: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3, Block Group 4; Tract 126.04: Block Group 3: Block 3008, Block 3015, Block 3016; Precinct GB 52: Tract 114: Block Group 5: Block 5006, Block 5007, Block 5008; Tract 126.04: Block Group 1, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3017; Precinct GB 53: Tract 128.04: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1012, Block 1013, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 2; Tract 168: Block Group 2: Block 2012, Block 2015, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2047; Precinct GB 54, Precinct GB 55, Precinct GB 57, Precinct GB 59, Precinct HP 02: Tract 140: Block Group 1: Block 1015, Block 1016, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2032, Block 2033, Block 2034; Precinct HP 03: Tract 142: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3021, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038; Tract 143: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1017, Block 1018; Block Group 2: Block 2006; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3033, Block 3034, Block 3035; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035; Tract 146: Block Group 1: Block 1055, Block 1056, Block 1057, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080; Precinct HP 04: Tract 145.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008; Tract 166: Block Group 1: Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055; Precinct HP 05, Precinct HP 07, Precinct HP 08, Precinct HP 09, Precinct HP 10: Tract 139: Block Group 1: Block 1000; Tract 144.06: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2; Tract 145.03: Block Group 1: Block 1056; Precinct HP 11, Precinct HP 12: Tract 136.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2000, Block 2001, Block 2003, Block 2004, Block 2010, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 3: Block 3018; Tract 138: Block Group 4: Block 4006, Block 4007, Block 4010, Block 4011, Block 4012, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Tract 146: Block Group 1: Block 1000, Block 1001, Block 1035, Block 1036, Block 1037, Block 1038; Precinct HP 17: Tract 136.02: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Block Group 4: Block 4000, Block 4011, Block 4012, Block 4013; Precinct HP 18: Tract 144.05: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2019, Block 2020; Block Group 3: Block 3003, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014, Block 3015; Precinct HP 19A: Tract 144.05: Block Group 2: Block 2011, Block 2015, Block 2016, Block 2017, Block 2018, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Precinct Jamestown 5: Tract 145.02: Block Group 1: Block 1005, Block 1009, Block 1999; Tract 164.02: Block Group 2: Block 2072, Block 2073, Block 2079, Block 2080, Block 2086; Tract 166: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1034, Block 1037, Block 1038, Block 1039, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block

1047, Block 1048, Block 1049, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1121, Block 1122, Block 1123, Block 1124; Tract 167: Block Group 5: Block 5040, Block 5041; Precinct Pleasant Garden 1: Tract 168: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1017, Block 1018; Block Group 2: Block 2060, Block 2061, Block 2063; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3023, Block 3998; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026; Precinct Pleasant Garden 2, Precinct Sumner 1: Tract 165.02: Block Group 2: Block 2002, Block 2003; Tract 167: Block Group 1: Block 1003, Block 1004, Block 1010; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2016, Block 2017, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028; Precinct Sumner 2, Precinct Sumner 3: Tract 167: Block Group 1: Block 1011, Block 1012, Block 1013; Block Group 2: Block 2026, Block 2027, Block 2035, Block 2036, Block 2037, Block 2038; Block Group 3: Block 3010, Block 3011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017; Precinct Sumner 4.

District 61: Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1015, Block 1016, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1044, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1055, Block 1056, Block 1075, Block 1076, Block 1079, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1108, Block 1115, Block 1118, Block 1119, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1134, Block 1135, Block 1136, Block 1137, Block 1138, Block 1139, Block 1140, Block 1141, Block 1142, Block 1145, Block 1146; Tract 163.01: Block Group 2: Block 2012; Precinct Friendship 2: Tract 164.03: Block Group 1: Block 1053, Block 1054, Block 1055, Block 1057; Tract 164.04: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1105, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117; Precinct HP: Tract 162.02: Block Group 1: Block 1041, Block 1042, Block 1043, Block 1045; Tract 163.02: Block Group 2: Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2054, Block 2055, Block 2056, Block 2057, Block 2997, Block 2998, Block 2999; Tract 164.02: Block Group 1: Block 1022, Block 1024, Block 1025, Block 1026, Block 1061, Block 1062, Block 1063, Block 1069, Block 1070, Block

1071, Block 1072, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1999; Tract 164.03: Block Group 1: Block 1013, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1030, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1998, Block 1999; Tract 164.04: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1106, Block 1999; Precinct HP 01, Precinct HP 02: Tract 140: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1018, Block 1019, Block 1020, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2030, Block 2031, Block 2035, Block 2036, Block 2061, Block 2062; Tract 144.07: Block Group 2: Block 2030, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051; Precinct HP 03: Tract 143: Block Group 1: Block 1000, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031; Block Group 3: Block 3008, Block 3009, Block 3010, Block 3011, Block 3020, Block 3021, Block 3022, Block 3023, Block 3031, Block 3032, Block 3036, Block 3037, Block 3038, Block 3039; Block Group 4: Block 4039, Block 4040, Block 4041; Tract 145.01: Block Group 1: Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1034, Block 1035; Precinct HP 04: Tract 145.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057; Tract 145.02: Block Group 1: Block 1006, Block 1007, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1027, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1037, Block 1038, Block 1041, Block 1047, Block 1049, Block 1051, Block 1052, Block 1053, Block 1060, Block 1062, Block 1063; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048; Tract 166: Block Group 1: Block 1082, Block 1083, Block 1084, Block 1085; Precinct HP 06, Precinct HP 10: Tract 144.06: Block Group 1: Block 1000, Block 1001, Block 1011; Precinct HP 12: Tract 136.02: Block Group 2: Block 2002, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2011, Block 2019, Block 2020; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3015, Block 3016, Block 3017, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Tract 138: Block Group 4: Block 4008, Block 4009; Tract 146: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1033, Block 1034, Block 1047, Block 1048, Block 1049; Precinct HP 13, Precinct HP 14, Precinct HP 15, Precinct HP 16, Precinct HP 17: Tract 136.02: Block Group 1: Block 1000; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3014, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4001, Block 4006, Block 4007, Block 4009, Block 4010; Precinct HP 18: Tract 144.05: Block Group 2: Block 2003; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3004, Block 3005, Block 3006, Block 3013; Precinct HP 19A: Tract 144.05: Block Group 2: Block 2012, Block 2013, Block 2014; Precinct HP 19B, Precinct HP 20A, Precinct HP 20B, Precinct HP 21, Precinct HP 22, Precinct HP 23, Precinct HP 24, Precinct HP 25, Precinct HP 26, Precinct HP 27, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3: Tract 126.09: Block Group 2: Block 2024, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2998; 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District 62: Guilford County: Precinct Center Grove 1, Precinct Center Grove 2, Precinct Center Grove 3, Precinct Center Grove North, Precinct Deep River North, Precinct Deep River South: Tract 162.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1143, Block 1144; Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct GB 24, Precinct GB 25, Precinct GB 27, Precinct GB 28, Precinct GB 29, Precinct GB 30, Precinct GB 32, Precinct GB 39: Tract 161.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct GB 40A, Precinct GB 40B, Precinct GB 41, Precinct GB 42, Precinct GB 64: Tract 160.04: Block Group 4: Block 4063, Block 4064, Block 4065, Block 4066, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1002, Block 1003; Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Stokesdale, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4.

District 63: Alamance County: Precinct Burlington 04, Precinct Burlington 05, Precinct Burlington 07, Precinct Burlington 08, Precinct Burlington 10, Precinct Burlington East, Precinct Burlington North, Precinct Burlington South, Precinct Burlington West, Precinct Graham 3, Precinct Graham East, Precinct Graham North, Precinct Graham West, Precinct Haw River, Precinct Melville North, Precinct Melville South, Precinct Pleasant Grove.

District 64: Alamance County: Precinct Albright, Precinct Boone 5, Precinct Boone Central, Precinct Boone North, Precinct Boone South, Precinct Boone West, Precinct Burlington 06, Precinct Burlington 09, Precinct Coble, Precinct Faucette, Precinct Graham 4, Precinct Graham South, Precinct Melville 3, Precinct Morton, Precinct Newlin North, Precinct Newlin South, Precinct Patterson, Precinct Thompson North, Precinct Thompson South.

District 65: Rockingham County: Precinct Bethlehem, Precinct Central Area, Precinct Draper, Precinct Ironworks: Tract 415: Block Group 5: Block 5004, Block 5005, Block 5006, Block 5009, Block 5010, Block 5997; Tract 416: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3012, Block 3013, Block 3014, Block 3015, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3041, Block 3992, Block 3993, Block 3999; Precinct Leaksville 1, Precinct Leaksville 2, Precinct Leaksville 3, Precinct Mayfield, Precinct Oregon Hill, Precinct Price, Precinct Reidsville 1, Precinct Reidsville 2, Precinct Reidsville 3, Precinct Reidsville 4, Precinct Reidsville 5, Precinct Reidsville 6, Precinct Ruffin, Precinct Shiloh, Precinct Simpsonville: Tract 411: Block Group 5: Block 5000, Block 5001, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024; Tract 412: Block Group 1: Block 1024; Tract 415: Block Group 5: Block 5000, Block 5001; Tract 416: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1039; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block

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District 66: Montgomery County: Precinct Biscoe, Precinct Candor, Precinct Cheeks Creek, Precinct Little River, Precinct Mt Gilead, Precinct Ophir, Precinct Pee Dee, Precinct Rocky Springs, Precinct Star, Precinct Troy 1, Precinct Troy 2, Precinct Uwharrie: Tract 9603: Block Group 1: Block 1160, Block 1165, Block 1166; Block Group 2: Block 2003, Block 2004, Block 2006; Precinct Wadeville; Richmond County.

District 67: Montgomery County: Precinct Eldorado, Precinct Uwharrie: Tract 9602: Block Group 4: Block 4058; Tract 9603: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2998, Block 2999; Tract 9604: Block Group 4: Block 4033, Block 4997; Stanly County, Union County: Precinct 11, Precinct 12: Tract 202.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4025, Block 4026, Block 4027; Precinct 13: Tract 202.01: Block Group 4: Block 4005, Block 4006, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Precinct 32.

District 68: Union County: Precinct 05, Precinct 06, Precinct 07: Tract 210.03: Block Group 1: Block 1021, Block 1022, Block 1026, Block 1027, Block 1042, Block 1043, Block 1044, Block 1045; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3045; Precinct 12: Tract 202.02: Block Group 4: Block 4010, Block 4020; Precinct 13: Tract 202.01: Block Group 4: Block 4024; Tract 202.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1024, Block 1025; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block

4015, Block 4016, Block 4017, Block 4018, Block 4019; Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22 & 33, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 34: Tract 206: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

District 69: Anson County, Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 07: Tract 205: Block Group 4: Block 4011, Block 4012, Block 4013, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034; Tract 209.02: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2013; Tract 210.03: Block Group 3: Block 3000, Block 3001, Block 3041, Block 3042, Block 3043, Block 3044; Precinct 08, Precinct 09, Precinct 10, Precinct 23, Precinct 24, Precinct 25, Precinct 26, Precinct 27, Precinct 34: Tract 201: Block Group 2: Block 2047, Block 2048; Block Group 3: Block 3012, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3998, Block 3999; Tract 206: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1029, Block 1030, Block 1998, Block 1999; Tract 207: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2038, Block 2039; Precinct 36, Precinct 43.

District 70: Randolph County: Precinct Archdale 1, Precinct Archdale 2, Precinct Archdale 3, Precinct Asheboro Armory, Precinct Asheboro Eastside, Precinct Asheboro Lindley Park, Precinct Asheboro North 2, Precinct Falls, Precinct Franklinville, Precinct Level Cross, Precinct Liberty, Precinct New Market North, Precinct New Market South, Precinct Providence 1, Precinct Providence 2, Precinct Ramseur, Precinct Randleman East, Precinct Randleman West, Precinct Staley.

District 71: Forsyth County: Precinct 042: Tract 35: Block Group 4: Block 4006, Block 4007; Precinct 043: Tract 34.01: Block Group 1: Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1033, Block 1034, Block 1035, Block 1036, Block 1041, Block 1043, Block 1045, Block 1046; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Precinct 082: Tract 17: Block Group 1: Block 1000; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042; Tract 30.01: Block Group 1: Block 1050, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block

1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1093, Block 1094, Block 1095, Block 1998, Block 1999; Tract 30.02: Block Group 2: Block 2029, Block 2032, Block 2033, Block 2034; Precinct 122: Tract 37: Block Group 4: Block 4036, Block 4037, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4083, Block 4084; Precinct 301, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506: Tract 36: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2000, Block 2001, Block 2005, Block 2006, Block 2007, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2999; Precinct 507: Tract 33.03: Block Group 2: Block 2006, Block 2007, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2023, Block 2024, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2052, Block 2053, Block 2054, Block 2055, Block 2062, Block 2998; Block Group 3: Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Tract 34.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1037, Block 1038, Block 1039, Block 1040, Block 1052, Block 1053, Block 1054, Block 1055; Precinct 601: Tract 9: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3013, Block 3014; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4008, Block 4009, Block 4015, Block 4016, Block 4017, Block 4018; Tract 10: Block Group 1: Block 1000, Block 1001, Block 1006, Block 1007, Block 1008, Block 1009; Block Group 2: Block 2004; Precinct 602: Tract 37: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2998, Block 2999; Precinct 603, Precinct 604: Tract 10: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 3: Block 3000, Block 3001, Block 3012, Block 3013, Block 3014; Tract 37: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Precinct 605: Tract 20.02: Block Group 1: Block 1001, Block 1002, Block 1012, Block 1013, Block 1014; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2007, Block 2016, Block 2017; Tract 36: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2008, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2998; Block Group 3: Block 3007, Block 3008, Block 3009; Tract 37: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Precinct 606, Precinct 704: Tract 10: Block

Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3009, Block 3010, Block 3011; Tract 21: Block Group 1: Block 1007; Precinct 902: Tract 1: Block Group 1: Block 1033, Block 1034, Block 1048, Block 1049, Block 1050, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1090, Block 1091, Block 1092; Tract 2: Block Group 1: Block 1014, Block 1015, Block 1018, Block 1019, Block 1020, Block 1021, Block 1024, Block 1025, Block 1026; Tract 11: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022.

District 72: Forsyth County: Precinct 031: Tract 28.07: Block Group 1: Block 1000, Block 1001, Block 1011, Block 1012, Block 1022, Block 1023, Block 1024, Block 1025; Precinct 032: Tract 28.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Tract 28.05: Block Group 3: Block 3077, Block 3078, Block 3079; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4017, Block 4018; Tract 28.06: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1031; Precinct 033: Tract 27.02: Block Group 1: Block 1000, Block 1001, Block 1012; Tract 28.05: Block Group 2: Block 2027, Block 2028; Tract 28.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2; Tract 28.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Tract 29.01: Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2033; Precinct 081, Precinct 082: Tract 17: Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008; Tract 30.02: Block Group 2: Block 2035, Block 2036, Block 2037; Precinct 083: Tract 16.01: Block Group 1: Block 1000, Block 1012, Block 1013; Tract 29.02: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100; Block Group 2: Block 2000, Block 2011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039; Tract 30.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2020, Block 2021; Precinct 101:

Tract 28.04: Block Group 1: Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1999; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3030; Tract 28.05: Block Group 4: Block 4015, Block 4016, Block 4019; Precinct 111: Tract 29.01: Block Group 2: Block 2021, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 903, Precinct 904, Precinct 905, Precinct 907, Precinct 908: Tract 26.03: Block Group 3: Block 3001; Tract 26.04: Block Group 3: Block 3000, Block 3001, Block 3002; Precinct 909: Tract 26.04: Block Group 1: Block 1012, Block 1013, Block 1016, Block 1017, Block 1019; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2007, Block 2008, Block 2009, Block 2010, Block 2023, Block 2024, Block 2025.

District 73: Davidson County: Precinct Abbotts Creek, Precinct Gumtree, Precinct Wallburg; Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 042: Tract 35: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Precinct 043: Tract 33.03: Block Group 3: Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039; Tract 34.01: Block Group 1: Block 1000, Block 1001, Block 1042, Block 1044, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1056, Block 1057, Block 1058; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Tract 34.02: Block Group 1, Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 112: Tract 31.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1013, Block 1052, Block 1053, Block 1054; Precinct 507: Tract 33.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3040, Block 3041.

District 74: Forsyth County: Precinct 031: Tract 28.07: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3012, Block 3013, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027; Precinct 032: Tract 28.05: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block

1010, Block 1025, Block 1026, Block 1027, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1100; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3052, Block 3053, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3064, Block 3065, Block 3066, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3080, Block 3995, Block 3996, Block 3997, Block 3998, Block 3999; Block Group 4: Block 4003; Precinct 033: Tract 29.01: Block Group 2: Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Precinct 034, Precinct 082: Tract 30.01: Block Group 1: Block 1002, Block 1003, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1051, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092; Block Group 2: Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082; Block Group 3: Block 3009, Block 3010, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3077, Block 3089, Block 3090, Block 3091; Tract 30.02: Block Group 2: Block 2000, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3015, Block 3016, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3997, Block 3998, Block 3999; Precinct 083: Tract 29.02: Block Group 1: Block 1000, Block 1001, Block 1011, Block 1012, Block 1013, Block 1014, Block 1088, Block 1089; Tract 30.02: Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3017, Block 3018, Block 3019, Block 3020; Precinct 091, Precinct 092, Precinct 101: Tract 28.01: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3061, Block 3062, Block 3063; Tract 28.04: Block Group 3: Block 3028, Block 3029; Tract 28.05: Block Group 3: Block 3063; Block Group 4: Block 4013, Block 4014; Precinct 111: Tract 28.07: Block Group 2: Block 2000, Block 2001, Block 2029, Block 2030, Block 2038; Tract 29.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2019, Block 2020; Tract 29.02: Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block

5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5034, Block 5999; Block Group 6: Block 6005, Block 6006, Block 6007, Block 6008; Precinct 112: Tract 29.02: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5032, Block 5033, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014; Tract 31.01: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068; Block Group 2: Block 2023, Block 2024, Block 2026, Block 2027, Block 2028, Block 2029, Block 2061, Block 2062, Block 2064, Block 2993; Precinct 131, Precinct 132, Precinct 133: Tract 39.07: Block Group 2: Block 2008; Tract 40.08: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Tract 41.02: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1018, Block 1019, Block 1021, Block 1022, Block 1023, Block 1024, Block 1997, Block 1998; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2999; Precinct 601: Tract 10: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2003, Block 2005, Block 2006; Block Group 4: Block 4000; Precinct 604: Tract 10: Block Group 2: Block 2007, Block 2008; Block Group 4: Block 4003, Block 4004, Block 4011; Precinct 701, Precinct 702, Precinct 703, Precinct 706, Precinct 707, Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 809, Precinct 901, Precinct 902: Tract 1: Block Group 1: Block 1035, Block 1036, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1087, Block 1088, Block 1089; Tract 11: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2023, Block 2024; Block Group 3: Block 3010, Block 3011; Precinct 906, Precinct 908: Tract 26.04: Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3997, Block 3998, Block 3999; Precinct 909: Tract 26.04: Block Group 1: Block 1014, Block 1015, Block 1018; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031.

District 75: Forsyth County: Precinct 042: Tract 35: Block Group 4: Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035; Tract 36: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3999; Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 122: Tract 37: Block Group 2: Block 2041, Block 2042, Block 2043; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4038, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4085, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block 4094, Block 4095, Block 4096, Block 4097, Block 4098, Block 4099, Block 4100, Block 4101, Block 4102, Block 4103, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4997, Block 4998, Block 4999; Tract 38.03: Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Precinct 123, Precinct 133: Tract 40.08: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2009, Block 2010, Block 2011; Tract 40.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1019, Block 1028, Block 1999; Block Group 2; Tract 41.02: Block Group 2: Block 2012, Block 2998; Precinct 506: Tract 36: Block Group 1: Block 1013; Block Group 3: Block 3004, Block 3005, Block 3013, Block 3014; Precinct 602: Tract 37: Block Group 2: Block 2023, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040; Block Group 3; Tract 38.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2022, Block 2023, Block 2024, Block 2027, Block 2028; Precinct 605: Tract 36: Block Group 3: Block 3006, Block 3010, Block 3011, Block 3012, Block 3038; Precinct 607, Precinct 704: Tract 21: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 22: Block Group 4: Block 4014, Block 4015, Block 4018, Block 4019; Precinct 705, Precinct 708, Precinct 709, Precinct 807, Precinct 808.

District 76: Rowan County: Precinct Barnhardt Mill, Precinct Blackwelder Park, Precinct Bostian Cross Road, Precinct Bostian School, Precinct China Grove North, Precinct China Grove South, Precinct Enochville East, Precinct Enochville West, Precinct Faith, Precinct Gold Knob, Precinct Granite Quarry

North, Precinct Granite Quarry South, Precinct Hatters Shop, Precinct Kannapolis East, Precinct Kannapolis West, Precinct Landis East, Precinct Landis West, Precinct Morgan 1, Precinct Morgan 2, Precinct Rock Grove, Precinct Rockwell, Precinct Sumner: Tract 502.02: Block Group 2: Block 2033, Block 2034, Block 2035, Block 2036, Block 2066; Tract 511.02: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2003, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Tract 512.03: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1033; Block Group 2: Block 2000, Block 2001, Block 2004, Block 2014, Block 2015, Block 2016, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Tract 512.04: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2024, Block 2027, Block 2028; Precinct Trading Ford.

District 77: Rowan County: Precinct Bradshaw, Precinct Cleveland, Precinct Ellis, Precinct Franklin, Precinct Innes West, Precinct Locke North, Precinct Locke South, Precinct Milford Hills City, Precinct Milford Hills County, Precinct Mt. Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Spencer East, Precinct Steele, Precinct Sumner: Tract 511.02: Block Group 2: Block 2012, Block 2013, Block 2016; Tract 512.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1030, Block 1031, Block 1032, Block 1034, Block 1035; Block Group 2: Block 2002, Block 2003, Block 2017; Tract 512.04: Block Group 1: Block 1013, Block 1023, Block 1024, Block 1040; Block Group 2: Block 2000, Block 2016, Block 2017, Block 2018, Block 2019, Block 2023; Precinct Unity, Precinct Ward 1 East, Precinct Ward 1 North, Precinct Ward 1 West, Precinct Ward 2 East, Precinct Ward 2 North, Precinct Ward 2 West, Precinct Ward 3 West, Precinct Ward South.

District 78: Randolph County: Precinct Asheboro Loflin, Precinct Asheboro Mccrary, Precinct Asheboro North 1, Precinct Asheboro Southpointe, Precinct Asheboro Westside, Precinct Back Creek, Precinct Brower, Precinct Cedar Grove East, Precinct Cedar Grove West, Precinct Coleridge, Precinct Concord, Precinct Grant, Precinct New Hope, Precinct Pleasant Grove, Precinct Prospect, Precinct Richland, Precinct Tabernacle, Precinct Trinity East, Precinct Trinity Tabernacle, Precinct Trinity West, Precinct Union.

District 79: Davie County, Iredell County: Precinct Bethany: Tract 607: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2026, Block 2991, Block 2993, Block 2994, Block 2997, Block 2998; Tract 610: Block Group 2: Block 2000; Block Group 3: Block 3008, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3019; Block Group 4: Block 4014, Block 4111, Block 4112; Precinct Chambersburg, Precinct Cool Springs, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 6: Tract 601: Block Group 4: Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4033, Block 4034; Tract 602: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1018, Block 1020; Block Group 2; Tract 603: Block Group 1: Block 1011; Block Group 2: Block 2000, Block 2007, Block 2008, Block 2030; Block Group 3: Block 3028; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4028, Block 4029; Tract 606: Block Group 3: Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block

3047, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060; Block Group 4: Block 4008, Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4048, Block 4049, Block 4053, Block 4997; Tract 612: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3027, Block 3028, Block 3029, Block 3033; Tract 613: Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016; Precinct Turnersburg.

District 80: Davidson County: Precinct Arcadia, Precinct Denton, Precinct Emmons, Precinct Healing Springs, Precinct Holly Grove, Precinct Lexington 3, Precinct Liberty, Precinct Midway, Precinct North Davidson, Precinct Reeds Yadkin College, Precinct Reedy Creek, Precinct Silver Valley, Precinct South Davidson, Precinct Thomasville 01, Precinct Thomasville 05: Tract 607: Block Group 1: Block 1031; Tract 610: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Block Group 3: Block 3019, Block 3020, Block 3021, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Tract 611: Block Group 1: Block 1000, Block 1005; Block Group 2: Block 2001, Block 2002, Block 2004, Block 2005; Precinct Thomasville 08, Precinct Thomasville 09, Precinct Thomasville 10, Precinct Welcome, Precinct West Arcadia.

District 81: Davidson County: Precinct Boone, Precinct Central, Precinct Cotton Grove, Precinct Lexington 1, Precinct Lexington 2, Precinct Lexington 4, Precinct Silver Hill, Precinct Southmont, Precinct Thomasville 02, Precinct Thomasville 03, Precinct Thomasville 04, Precinct Thomasville 05: Tract 607: Block Group 1: Block 1032; Tract 610: Block Group 2: Block 2019, Block 2020, Block 2021; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3017, Block 3018, Block 3022, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059; Precinct Thomasville 07, Precinct Tyro, Precinct Ward 1, Precinct Ward 2, Precinct Ward 3, Precinct Ward 4, Precinct Ward 5, Precinct Ward 6.

District 82: Cabarrus County: Precinct 01-03, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 02-07, Precinct 03-00, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 12-08, Precinct 12-09, Precinct 12-10, Precinct 12-11, Precinct 12-12.

District 83: Cabarrus County: Precinct 01-01, Precinct 01-02, Precinct 01-04, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04, Precinct 04-05, Precinct 04-06, Precinct 04-07, Precinct 04-08, Precinct 04-09, Precinct 04-10, Precinct 05-00, Precinct 06-00, Precinct 07-00, Precinct 08-00, Precinct 09-00, Precinct 10-00, Precinct 11-01, Precinct 11-02.

District 84: Avery County, Caldwell County: Precinct Gamewell 1, Precinct Gamewell 2, Precinct Globe/Johns River, Precinct Lenoir 4: Tract 302: Block

Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2025; Block Group 3: Block 3000, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024; Tract 303: Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021; Tract 309: Block Group 1: Block 1133, Block 1134, Block 1135, Block 1136; Precinct Mulberry, Precinct North Catawba 2: Tract 303: Block Group 3: Block 3017, Block 3018, Block 3019, Block 3020, Block 3022, Block 3023; Precinct Wilson Creek; Mitchell County, Yancey County: Precinct Brush Creek, Precinct Burnsville, Precinct Cane River, Precinct Crabtree, Precinct Egypt, Precinct Green Mountain, Precinct Jacks Creek, Precinct Pensacola, Precinct Prices Creek: Tract 9603: Block Group 1: Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1078; Tract 9604: Block Group 1: Block 1066, Block 1067, Block 1068, Block 1069, Block 1094; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3037, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3063, Block 3064, Block 3065, Block 3094, Block 3095, Block 3096, Block 3097, Block 3098, Block 3099, Block 3100, Block 3101, Block 3102, Block 3103, Block 3104, Block 3105, Block 3106, Block 3107, Block 3108; Precinct Ramseytown, Precinct South Toe.

District 85: Burke County: Precinct Icard 2, Precinct Icard 3, Precinct Icard 4: Tract 210: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2047, Block 2049, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2066, Block 2067, Block 2068, Block 2069, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006; Tract 212.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041; Block Group 2: Block 2002, Block 2003; Precinct Icard 5, Precinct Lower Fork, Precinct Morganton 07: Tract 213.01: Block Group 1: Block 1009, Block 1010; Block Group 3: Block 3018, Block 3019, Block 3021; Tract 213.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1025, Block 1026; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2024; Precinct Silver Creek 2, Precinct Silver Creek 3, Precinct Upper Fork; McDowell County.

District 86: Burke County: Precinct Drexel 1, Precinct Drexel 3, Precinct Icard 1, Precinct Icard 4: Tract 210: Block Group 2: Block 2042, Block 2043, Block 2044, Block 2048, Block 2050, Block 2063, Block 2064, Block 2065, Block 2070, Block 2071; Precinct Jonas Ridge, Precinct Linville 1, Precinct Linville 2, Precinct Lovelady 1, Precinct Lovelady 2, Precinct Lovelady 4, Precinct Lower

Creek, Precinct Morganton 01, Precinct Morganton 04, Precinct Morganton 05, Precinct Morganton 06, Precinct Morganton 07: Tract 203.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1031, Block 1032; Tract 213.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1011, Block 1012; Block Group 2; Tract 213.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1024; Block Group 2: Block 2013; Precinct Morganton 08, Precinct Morganton 09, Precinct Morganton 10, Precinct Quaker Meadow 1, Precinct Quaker Meadow 2, Precinct Silver Creek 1, Precinct Smokey Creek, Precinct Upper Creek.

District 87: Caldwell County: Precinct Hudson 1, Precinct Hudson 2, Precinct Kings Creek, Precinct Lenoir 1, Precinct Lenoir 2, Precinct Lenoir 3, Precinct Lenoir 4: Tract 302: Block Group 2: Block 2000, Block 2001, Block 2010, Block 2011, Block 2012, Block 2024, Block 2026; Precinct Little River, Precinct Lovelady 1, Precinct Lovelady 2, Precinct Lovelady-Rhodhiss, Precinct Lower Creek 1, Precinct Lower Creek 2, Precinct Lower Creek 3, Precinct Lower Creek 4, Precinct North Catawba 1, Precinct North Catawba 2: Tract 303: Block Group 3: Block 3013, Block 3016, Block 3021, Block 3024, Block 3025, Block 3026, Block 3027; Tract 307: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Block Group 5: Block 5001; Tract 308: Block Group 2: Block 2000, Block 2001, Block 2005; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3015, Block 3016, Block 3017, Block 3018; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Precinct Patterson, Precinct Sawmills 1, Precinct Sawmills 2, Precinct Yadkin Valley.

District 88: Alexander County, Catawba County: Precinct College Park, Precinct Falling Creek, Precinct Greenmont, Precinct Highland, Precinct Kenworth, Precinct Northwest, Precinct Oakland Heights, Precinct Oakwood, Precinct Ridgeview, Precinct Sweetwater: Tract 109: Block Group 2: Block 2000, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031, Block 2032, Block 2033; Tract 110: Block Group 2: Block 2018, Block 2024, Block 2025, Block 2026, Block 2028, Block 2029, Block 2030, Block 2031; Block Group 4: Block 4018, Block 4019, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038; Tract 111.02: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004; Precinct Viewmont 1, Precinct Viewmont 2.

District 89: Catawba County: Precinct Balls Creek, Precinct Catawba, Precinct Claremont, Precinct Lake Norman, Precinct Maiden, Precinct Maiden East, Precinct Monogram, Precinct Mount Olive, Precinct Newton South, Precinct Oxford, Precinct Sherrills Ford, Precinct Startown: Tract 117.01: Block Group 2: Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060; Tract 117.02: Block Group 1: Block 1017, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3016, Block 3017, Block 3018, Block 3022; Iredell County: Precinct Bethany: Tract 610: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2010, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3010, Block 3011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4013; Block Group 5: Block 5000, Block 5001, Block 5007, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019; Precinct Concord, Precinct Fallstown: Tract 611: Block Group 5: Block 5031, Block 5032, Block 5033; Tract 612: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1998, Block 1999; Block Group 2: Block 2017; Precinct Shiloh.

District 90: Alleghany County, Surry County: Precinct Bryan, Precinct Dobson 1, Precinct Dobson 2, Precinct Dobson 3, Precinct Elkin 1, Precinct Elkin 2, Precinct Elkin 3, Precinct Franklin, Precinct Marsh, Precinct Mt Airy 1, Precinct Mt Airy 2, Precinct Mt Airy 3, Precinct Mt Airy 4, Precinct Mt Airy 5, Precinct Mt Airy 7, Precinct Mt Airy 8, Precinct Mt Airy 9, Precinct Rockford, Precinct Stewarts Creek 1, Precinct Stewarts Creek 2.

District 91: Rockingham County: Precinct Dan Valley, Precinct Hogans, Precinct Huntsville, Precinct Ironworks: Tract 416: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3010, Block 3011, Block 3016, Block 3017, Block 3018, Block 3019, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3991, Block 3994, Block 3995, Block 3996, Block 3997, Block 3998; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4999; Block Group 5: Block 5009, Block 5010, Block 5020; Precinct Madison 1, Precinct Madison 2, Precinct Martins, Precinct Mayodan, Precinct New Bethel, Precinct Simpsonville: Tract 416: Block Group 1: Block 1038; Block Group 2: Block 2017, Block 2028, Block 2034, Block 2035, Block 2997; Block Group 5: Block 5000, Block 5008; Stokes County.

District 92: Iredell County: Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Union Grove; Surry County: Precinct Eldora, Precinct Longhill, Precinct Mt Airy 6, Precinct Pilot 1, Precinct Pilot 2, Precinct Shoals, Precinct Siloam, Precinct Westfield North, Precinct Westfield South; Yadkin County.

District 93: Ashe County, Watauga County.

District 94: Wilkes County.

District 95: Iredell County: Precinct Barringer, Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown: Tract 612: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3037, Block 3040, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053; Block Group 4: Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4027, Block 4028, Block 4030, Block 4031, Block 4032; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5020, Block 5021, Block 5022, Block 5023, Block 5030, Block 5031, Block 5999; Block Group 6, Block Group 7, Block Group 8: Block 8000, Block 8001, Block 8002, Block 8003, Block 8004, Block 8005, Block 8006, Block 8007, Block 8009, Block 8010, Block 8048, Block 8049, Block 8053, Block 8054, Block 8996, Block 8999; Block Group 9: Block 9002, Block 9003, Block 9004, Block 9005, Block 9006, Block 9007, Block 9008, Block 9009, Block 9010, Block 9011; Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6: Tract 603: Block Group 2: Block 2012, Block 2013, Block 2014, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2031; Block Group 3: Block 3027, Block 3029; Block Group 4: Block 4004, Block 4005, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027; Tract 612: Block Group 2: Block 2000, Block 2001, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2999; Block Group 3: Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3998, Block 3999.

District 96: Catawba County: Precinct Banoak, Precinct Blackburn, Precinct Brookford, Precinct Conover East, Precinct Conover West, Precinct Longview North, Precinct Longview South, Precinct Mountain View 1, Precinct Mountain View 2, Precinct Newton East, Precinct Newton North, Precinct Newton West, Precinct Sandy Ridge, Precinct Springs, Precinct St Stephens 1, Precinct St Stephens 2, Precinct Startown: Tract 111.02: Block Group 2: Block 2084, Block 2085; Block Group 3: Block 3039, Block 3040; Tract 117.01: Block Group 1: Block 1049, Block 1050, Block 1051, Block 1052; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045; Tract 117.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1018, Block 1019; Precinct Sweetwater: Tract 110: Block Group 3: Block 3002, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3032, Block 3033, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4020, Block 4021, Block 4022, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4083, Block 4084; Tract 111.02: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1021; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2081, Block 2082, Block 2083, Block 2086, Block 2087; Block Group 3: Block 3000, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3041; Tract 117.01: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026.

District 97: Lincoln County.

District 98: Mecklenburg County: Precinct 127, Precinct 128, Precinct 133, Precinct 134: Tract 62.07: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2015, Block 2016; Precinct 142, Precinct 143, Precinct 145, Precinct 202, Precinct 206, Precinct 207: Tract 62.06: Block Group 1: Block 1034, Block 1035, Block 1046, Block 1047; Tract 63.01: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1025, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007; Precinct 208, Precinct 209: Tract 61.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1069, Block 1996, Block 1997, Block 1998, Block 1999; Tract 62.07: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1989, Block 1990, Block 1991, Block 1992, Block 1993, Block 1994, Block 1995, Block 1996, Block 1997; Block Group 2: Block 2017, Block 2018, Block 2019, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074; Precinct 211: Tract 61.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1011, Block 1062, Block 1063; Precinct 214, Precinct 223: Tract 60.03: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2028, Block 2029, Block 2050, Block 2051, Block 2997, Block 2998, Block 2999; Tract 61.01: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1994, Block 1995; Precinct 238, Precinct 239, Precinct 240, Precinct 241: Tract 63.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1999; Precinct 242.

District 99: Mecklenburg County: Precinct 004, Precinct 082: Tract 53.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 3; Precinct 104, Precinct 105, Precinct 107, Precinct 123, Precinct 126, Precinct 132: Tract 15.05: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Precinct 134: Tract 62.06: Block Group 1: Block 1048, Block 1049; Tract 62.07: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2077, Block 2078, Block 2079; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3041; Precinct 135: Tract 54.02: Block Group 1: Block 1000, Block 1001, Block 1002; Tract 55.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1032, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1999; Tract 61.02: Block Group 1: Block 1000, Block 1001, Block 1002; Precinct 141, Precinct 204, Precinct 205, Precinct 207: Tract 63.01: Block Group 2: Block 2013, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Block Group 3: Block 3008, Block 3009; Precinct 209: Tract 62.07: Block Group 3: Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3048; Precinct 211: Tract 55.03: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066; Tract 61.02: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Precinct 212, Precinct 237, Precinct 241: Tract 62.07: Block Group 2: Block 2000, Block 2001, Block 2075, Block 2076, Block 2080, Block 2081; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block

3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Tract 63.02: Block Group 1: Block 1019; Block Group 2.

District 100: Mecklenburg County: Precinct 005, Precinct 006, Precinct 007, Precinct 033, Precinct 034, Precinct 045, Precinct 062, Precinct 063, Precinct 064, Precinct 066: Tract 20.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1008; Precinct 084, Precinct 085, Precinct 095, Precinct 096, Precinct 099, Precinct 106: Tract 20.03: Block Group 1: Block 1000, Block 1002, Block 1008, Block 1014, Block 1015; Precinct 108, Precinct 117, Precinct 124, Precinct 125, Precinct 130, Precinct 217: Tract 30.15: Block Group 3: Block 3000, Block 3001, Block 3007; Tract 58.12: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1005, Block 1011, Block 1012.

District 101: Mecklenburg County: Precinct 011, Precinct 012, Precinct 026, Precinct 027, Precinct 042: Tract 53.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Precinct 053: Tract 40: Block Group 5: Block 5000, Block 5001; Tract 59.01: Block Group 2: Block 2025, Block 2027; Precinct 054, Precinct 055, Precinct 056, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 135: Tract 55.04: Block Group 1: Block 1073; Tract 61.02: Block Group 1: Block 1003, Block 1013, Block 1014, Block 1015; Precinct 200: Tract 59.01: Block Group 2: Block 2012, Block 2013, Block 2030, Block 2031, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3036, Block 3037, Block 3038, Block 3995, Block 3996, Block 3997, Block 3999; Precinct 210, Precinct 211: Tract 61.02: Block Group 3: Block 3021, Block 3022, Block 3040; Precinct 213, Precinct 222, Precinct 223: Tract 60.03: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2996; Tract 61.01: Block Group 2: Block 2005; Precinct 224.

District 102: Mecklenburg County: Precinct 001, Precinct 002, Precinct 003, Precinct 013, Precinct 014, Precinct 015, Precinct 017, Precinct 028, Precinct 029, Precinct 030, Precinct 035: Tract 22: Block Group 1, Block Group 2: Block 2000, Block 2001; Precinct 042: Tract 53.03: Block Group 1: Block 1003, Block 1004, Block 1006; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011; Block Group 5: Block 5012; Precinct 043, Precinct 044, Precinct 046, Precinct 060, Precinct 061, Precinct 082: Tract 53.03: Block Group 3: Block 3000, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009; Block Group 4: Block 4000, Block 4001, Block 4005, Block 4006; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5013; Tract 53.04: Block Group 1: Block 1008; Block Group 2; Precinct 109, Precinct 132: Tract 15.05: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Tract 53.03: Block Group 6: Block 6000, Block 6001.

District 103: Mecklenburg County: Precinct 083, Precinct 094, Precinct 102, Precinct 115, Precinct 116, Precinct 136, Precinct 201, Precinct 203, Precinct 215, Precinct 216, Precinct 217: Tract 58.12: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038; Tract 58.13: Block Group 1: Block 1000, Block 1001, Block 1002; Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 233, Precinct 234, Precinct 235, Precinct 236.

District 104: Mecklenburg County: Precinct 008: Tract 27: Block Group 4: Block 4007, Block 4008, Block 4009; Block Group 5: Block 5013, Block 5014; Precinct 019, Precinct 035: Tract 22: Block Group 2: Block 2002, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011; Precinct 036, Precinct 047: Tract 20.02: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Tract 22: Block Group 3; Precinct 048, Precinct 049, Precinct 057, Precinct 065, Precinct 066: Tract 20.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Precinct 067, Precinct 068, Precinct 069: Tract 30.13: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1019, Block 1020, Block 1021, Block 1022; Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 086, Precinct 092, Precinct 093, Precinct 101, Precinct 106: Tract 20.03: Block Group 1: Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Precinct 110, Precinct 111, Precinct 114, Precinct 119, Precinct 129: Tract 58.07: Block Group 4: Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026.

District 105: Mecklenburg County: Precinct 069: Tract 30.13: Block Group 1: Block 1000, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1023, Block 1024; Block Group 2; Precinct 087: Tract 58.06: Block Group 5: Block 5009, Block 5010, Block 5011; Block Group 6: Block 6000, Block 6005, Block 6006; Tract 58.08: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005; Block Group 2; Precinct 088, Precinct 090, Precinct 091, Precinct 100, Precinct 103, Precinct 112, Precinct 113, Precinct 118, Precinct 121, Precinct 131, Precinct 137, Precinct 139, Precinct 140, Precinct 144, Precinct 226, Precinct 227, Precinct 231: Tract 58.18: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Precinct 232.

District 106: Mecklenburg County: Precinct 008: Tract 27: Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3015; Block Group 4: Block 4000, Block 4005, Block 4006; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011; Precinct 009, Precinct 010, Precinct 018, Precinct 020, Precinct 021, Precinct 032, Precinct 037, Precinct 038, Precinct 047: Tract 22: Block Group 4; Precinct 050, Precinct 051, Precinct 052, Precinct 058, Precinct 059, Precinct 078, Precinct 098, Precinct 120, Precinct 138, Precinct 77, Precinct 97.

District 107: Mecklenburg County: Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 053: Tract 40: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Block Group 4, Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021; Tract 43.01: Block Group 3: Block 3021, Block 3022; Block Group 4; Precinct 087: Tract 58.06: Block Group 4: Block 4002, Block 4003, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5012; Block Group 6: Block 6001, Block 6002, Block 6003, Block 6004; Precinct 122, Precinct 129: Tract 58.06: Block Group 4: Block 4000, Block 4001, Block 4004, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Block Group 5: Block 5013; Tract 58.07: Block Group 1: Block 1015, Block 1016, Block 1017; Block Group 3: Block 3005, Block 3006, Block 3007, Block 3009, Block 3010; Block Group 4: Block 4007, Block 4008, Block 4010, Block 4015, Block 4016, Block 4017, Block 4027, Block 4028, Block 4029; Precinct 200: Tract 59.01: Block Group 3: Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3993, Block 3994, Block 3998; Block Group 4; Precinct 225, Precinct 228, Precinct 229, Precinct 230, Precinct 231: Tract 58.06: Block Group 3; Tract 58.18: Block Group 2: Block 2012, Block 2013, Block 2014; Precinct 243.

District 108: Gaston County: Precinct Ashbrook, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Cramerton, Precinct Flint Grove: Tract 313.01: Block Group 1: Block 1023, Block 1024; Tract 313.02: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025; Tract 314: Block Group 1: Block 1007; Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4016, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4029, Block 4030; Tract 321: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3033, Block 3034; Precinct Gardner Park, Precinct Grier, Precinct Lowell, Precinct Lucia, Precinct Mcadenville, Precinct Mt Holly 1, Precinct Mt Holly 2, Precinct New Hope: Tract 322: Block Group 3: Block 3010, Block 3011; Tract 325.04: Block Group 3: Block 3017, Block 3025, Block 3026, Block 3028, Block 3029; Precinct Ranlo, Precinct Sherwood, Precinct Southpoint: Tract 324: Block Group 4: Block 4000, Block 4001, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4996, Block 4997; Block Group 5: Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5999; Block Group 6: Block 6010, Block 6011, Block 6012, Block 6013, Block 6016, Block 6017, Block 6018, Block 6020, Block 6022; Precinct Stanley 1, Precinct Stanley 2.

District 109: Gaston County: Precinct Armstrong, Precinct Crowders Mountain, Precinct Forest Heights, Precinct Gaston Day, Precinct Health Center, Precinct Highland, Precinct Myrtle, Precinct New Hope: Tract 325.02, Tract 325.04: Block Group 1: Block 1003; Block Group 3: Block 3010, Block 3013, Block 3015, Block 3016, Block 3027, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3995; Precinct Pleasant

Ridge, Precinct Robinson 1, Precinct Robinson 2, Precinct South Gastonia, Precinct Southpoint: Tract 324: Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6014, Block 6015, Block 6019, Block 6021, Block 6023, Block 6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6997, Block 6998, Block 6999; Precinct Union, Precinct Victory, Precinct York Chester.

District 110: Cleveland County: Precinct Casar, Precinct Fallston, Precinct Lawndale, Precinct Mulls, Precinct Oak Grove: Tract 9503: Block Group 3: Block 3000, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3028, Block 3029, Block 3030; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4011; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5018; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6016, Block 6018, Block 6019; Precinct Polkville, Precinct Waco; Gaston County: Precinct Alexis, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct Dallas 1, Precinct Dallas 2, Precinct Flint Grove: Tract 314: Block Group 2: Block 2000, Block 2001, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Block Group 5: Block 5006, Block 5007, Block 5009, Block 5010, Block 5011, Block 5012; Precinct High Shoals, Precinct Landers Chapel, Precinct Tryon, Precinct Wood Hill.

District 111: Cleveland County: Precinct Bethware, Precinct Boiling Springs, Precinct Grover, Precinct Holly Springs, Precinct Kings Mountain 1, Precinct Kings Mountain 2, Precinct Kings Mountain 3, Precinct Kings Mountain 4, Precinct Oak Grove: Tract 9503: Block Group 5: Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Block Group 6: Block 6014, Block 6015, Block 6017; Tract 9506: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Precinct Rippy, Precinct Shanghai, Precinct Shelby 1, Precinct Shelby 2, Precinct Shelby 3, Precinct Shelby 4, Precinct Shelby 5, Precinct Shelby 6, Precinct Shelby 7, Precinct Shelby 8.

District 112: Cleveland County: Precinct Kingstown, Precinct Lattimore, Precinct Mooresboro-Young; Rutherford County.

District 113: Henderson County: Precinct Armory, Precinct Atkinson, Precinct Crab Creek, Precinct East Flat Rock, Precinct Etowah South, Precinct Flat Rock, Precinct Green River, Precinct Raven Rock; Polk County, Transylvania County.

District 114: Buncombe County: Precinct Asheville 02, Precinct Asheville 03, Precinct Asheville 04, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14: Tract 2: Block Group 2: Block 2999; Tract 3: Block Group 1: Block 1994, Block 1995, Block 1996; Tract 9: Block Group 4: Block 4999; Tract 10: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1025, Block 1026, Block 1027, Block 1999; Tract 11: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Tract 12: Block Group 1: Block 1000, Block 1001; Tract 13: Block Group 1: Block 1000, Block 1001; Tract 14: Block Group 1:

Block 1002, Block 1003, Block 1009, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1999; Block Group 2, Block Group 3: Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3997, Block 3998; Block Group 4: Block 4012, Block 4013, Block 4015, Block 4016; Block Group 5: Block 5012, Block 5013, Block 5014, Block 5015; Precinct Asheville 15, Precinct Asheville 16, Precinct Asheville 22, Precinct Asheville 26, Precinct Asheville 27, Precinct Asheville 28, Precinct Flat Creek, Precinct French Broad, Precinct Ivy 1 & 2, Precinct Leicester 1, Precinct Leicester 2 & Sandy Mush, Precinct North Buncombe, Precinct Reems Creek, Precinct Weaverville, Precinct West Buncombe 1: Tract 25.01: Block Group 5: Block 5044, Block 5045, Block 5046; Tract 26.01: Block Group 2: Block 2013, Block 2014, Block 2015, Block 2046, Block 2047, Block 2048, Block 2049; Tract 26.02: Block Group 1: Block 1021; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2024, Block 2025; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015; Block Group 4: Block 4004, Block 4006, Block 4007; Precinct Woodland Hills.

District 115: Buncombe County: Precinct Asheville 01, Precinct Asheville 06, Precinct Asheville 07, Precinct Asheville 08, Precinct Asheville 09, Precinct Asheville 10, Precinct Asheville 17, Precinct Asheville 20, Precinct Asheville 21, Precinct Asheville 23, Precinct Asheville 25, Precinct Asheville 29: Tract 22.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Precinct Black Mountain 1, Precinct Black Mountain 2, Precinct Black Mountain 3, Precinct Black Mountain 4, Precinct Black Mountain 5, Precinct Broad River, Precinct Fairview 1, Precinct Fairview 2, Precinct Limestone 4: Tract 21.02: Block Group 1: Block 1031; Block Group 2: Block 2043; Tract 22.02: Block Group 1: Block 1001, Block 1002, Block 1005, Block 1006, Block 1009, Block 1010, Block 1019, Block 1020, Block 1021; Tract 32: Block Group 1: Block 1030, Block 1031, Block 1032; Block Group 2: Block 2019, Block 2020, Block 2023, Block 2024, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2039, Block 2041, Block 2043; Block Group 3: Block 3011; Precinct Reynolds, Precinct Riceville 1 & Swannanoa 2, Precinct Riceville 2 & Swannanoa 3, Precinct Swannanoa 1.

District 116: Buncombe County: Precinct Asheville 05, Precinct Asheville 14: Tract 14: Block Group 5: Block 5002, Block 5006, Block 5007, Block 5008, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021; Precinct Asheville 18, Precinct Asheville 19, Precinct Asheville 24, Precinct Asheville 29: Tract 22.02: Block Group 2: Block 2009, Block 2010, Block 2011; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Precinct Averys Creek, Precinct Biltmore, Precinct Hazel 1, Precinct Hazel 2, Precinct Limestone 1, Precinct Limestone 2, Precinct Limestone 3, Precinct Limestone 4: Tract 22.02: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025; Tract 32: Block Group 3: Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043; Precinct Lower Hominy 1, Precinct Lower Hominy 2, Precinct Lower Hominy 3, Precinct Upper Hominy 1 & 3, Precinct Upper Hominy 2, Precinct West Buncombe 1: Tract 14: Block Group 5: Block 5005; Tract 26.02: Block Group 2: Block 2000, Block 2027, Block 2028; Block

Group 3: Block 3000, Block 3001, Block 3002; Block Group 6: Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018; Block Group 7: Block 7000, Block 7001, Block 7003, Block 7004, Block 7005, Block 7006, Block 7010, Block 7017, Block 7999; Precinct West Buncombe 2, Precinct Woodfin.

District 117: Henderson County: Precinct Bat Cave, Precinct Blue Ridge North, Precinct Blue Ridge South, Precinct Brickton, Precinct Clear Creek, Precinct Edneyville, Precinct Etowah Valley, Precinct Fletcher, Precinct Grimesdale, Precinct Hendersonville 1, Precinct Hendersonville 2, Precinct Hendersonville 3, Precinct Hoopers Creek, Precinct Horse Shoe, Precinct Laurel Park, Precinct Long John Mountain, Precinct Mills River North, Precinct Mills River South, Precinct Moores Grove, Precinct Northeast, Precinct Northwest, Precinct Park Ridge, Precinct Pisgah View, Precinct Rugby, Precinct Southeast, Precinct Southwest.

District 118: Haywood County: Precinct Allens Creek: Tract 9808: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2024; Tract 9811: Block Group 2: Block 2023, Block 2054, Block 2055, Block 2056, Block 2074, Block 2075, Block 2076, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085; Tract 9812: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3044; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4017, Block 4018, Block 4023; Block Group 5: Block 5014, Block 5015, Block 5034, Block 5035, Block 5036, Block 5037; Precinct Beaverdam 1, Precinct Beaverdam 2, Precinct Beaverdam 3, Precinct Beaverdam 4, Precinct Beaverdam 5/6, Precinct Beaverdam 7, Precinct Big Creek, Precinct Clyde North, Precinct Clyde South, Precinct Crabtree, Precinct Fines Creek 1, Precinct Fines Creek 2, Precinct Hazelwood, Precinct Iron Duff, Precinct Ivy Hill: Tract 9801: Block Group 2: Block 2056, Block 2057, Block 2058; Tract 9806: Block Group 1: Block 1037, Block 1041, Block 1042, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086; Block Group 4: Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4066; Tract 9808: Block Group 1: Block 1003, Block 1010; Precinct Jonathan Creek, Precinct Lake Junaluska, Precinct Pigeon: Tract 9811: Block Group 2: Block 2009, Block 2010, Block 2013, Block 2014, Block 2015, Block 2016; Tract 9812: Block Group 5: Block 5000; Tract 9813: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1041; Block Group 2: Block 2019, Block 2020, Block 2037, Block 2039, Block 2040; Block Group 3: Block 3015, Block 3016, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3041, Block 3042, Block 3058, Block 3059, Block 3060, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093, Block 3094, Block 3095, Block 3096, Block 3097, Block 3098, Block 3099, Block 3100; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4021, Block 4022, Block

4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4036, Block 4037, Block 4038, Block 4039, Block 4048, Block 4049, Block 4050; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005; Precinct Pigeon Center, Precinct Waynesville Center, Precinct Waynesville East, Precinct Waynesville South 1: Tract 9808: Block Group 1: Block 1011, Block 1013, Block 1025, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1042, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075; Block Group 2: Block 2002; Tract 9809: Block Group 1: Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Tract 9811: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1035, Block 1036, Block 1037, Block 1038, Block 1040, Block 1041, Block 1042; Tract 9812: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Precinct Waynesville South 2, Precinct Waynesville West, Precinct White Oak; Madison County, Yancey County: Precinct Prices Creek: Tract 9604: Block Group 3: Block 3038, Block 3039, Block 3040, Block 3052, Block 3053, Block 3061, Block 3062, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093.

District 119: Haywood County: Precinct Allens Creek: Tract 9811: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2086, Block 2087; Tract 9812: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3043; Block Group 4: Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4122, Block 4123, Block 4124, Block 4125, Block 4126, Block 4127, Block 4128, Block 4129, Block 4130, Block 4131, Block 4132, Block 4133, Block 4134, Block 4135; Block Group 5: Block 5001, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5032, Block 5033, Block 5038, Block 5039, Block 5040, Block 5041; Tract 9813: Block Group 4: Block 4057, Block 4058; Precinct Cecil, Precinct East Fork, Precinct Ivy Hill: Tract 9801: Block Group 2: Block 2053, Block 2054, Block 2055, Block 2059; Tract 9806: Block Group 4: Block 4038, Block 4039, Block 4040, Block 4041; Tract 9807: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137, Block 1138, Block 1139, Block 1140, Block 1141, Block 1142, Block 1143, Block 1144, Block 1145, Block 1146, Block 1147, Block 1148, Block 1149, Block 1150, Block 1151, Block 1152, Block 1153, Block 1154, Block 1155, Block 1156, Block 1157, Block 1158, Block 1159, Block 1160, Block 1161, Block 1162, Block 1163, Block 1164, Block 1165, Block 1166, Block 1167, Block 1168, Block 1169, Block 1170; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093, Block 3094, Block 3095, Block 3096, Block 3097, Block 3098, Block 3099, Block 3100, Block 3101, Block 3102, Block 3103, Block 3104, Block 3105, Block 3106, Block 3107, Block 3108, Block 3109, Block 3110, Block 3111, Block 3112, Block 3113, Block 3114, Block 3115, Block 3116, Block 3117, Block 3118, Block 3119, Block 3120, Block 3121, Block 3122, Block 3123, Block 3124, Block 3125, Block 3126, Block 3127, Block 3128, Block 3134; Tract 9808: Block Group 1: Block 1014, Block 1019, Block 1021, Block 1083; Precinct Pigeon: Tract 9813: Block Group 1: Block 1038, Block 1039; Block Group 4: Block 4000, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4051, Block 4052, Block 4056, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block 4154, Block 4155, Block 4156, Block 4161; Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017; Block Group 6: Block 6020, Block 6021, Block 6022, Block 6025, Block 6026; Precinct Saunook, Precinct Waynesville South 1: Tract 9807: Block Group 3: Block 3129, Block 3130, Block 3131, Block 3132; Tract 9808: Block Group 1: Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1022, Block 1023, Block 1024, Block 1027, Block 1039, Block 1040, Block 1041, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082; Block Group 2: Block 2003, Block 2013, Block 2014; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005; Jackson County, Macon County: Precinct Cowee, Precinct Franklin North: Tract 9703: Block Group 1: Block 1014; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005;

Block Group 6: Block 6027, Block 6028, Block 6029; Block Group 7: Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7025, Block 7044, Block 7045, Block 7048, Block 7049, Block 7051, Block 7052, Block 7053, Block 7054, Block 7055, Block 7059, Block 7060, Block 7061, Block 7062, Block 7063, Block 7064, Block 7065, Block 7066, Block 7067, Block 7068, Block 7069, Block 7070, Block 7071, Block 7072, Block 7073; Block Group 8: Block 8016, Block 8017, Block 8036, Block 8037, Block 8039, Block 8040, Block 8041, Block 8042, Block 8043, Block 8044, Block 8045, Block 8046; Precinct Iotla, Precinct Millshoal: Tract 9701: Block Group 2: Block 2024, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3067, Block 3068, Block 3999; Tract 9703: Block Group 1: Block 1998; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3998, Block 3999; Tract 9704: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1048, Block 1049, Block 1050, Block 1051, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1075, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Swain County.

District 120: Cherokee County, Clay County, Graham County, Macon County: Precinct Burningtown, Precinct Cartoogechaye, Precinct Ellijay, Precinct Flats, Precinct Franklin East, Precinct Franklin North: Tract 9703: Block Group 2: Block 2000, Block 2001, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2027, Block 2028; Block Group 7: Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7039, Block 7041, Block 7042, Block 7043, Block 7046, Block 7047, Block 7050, Block 7056, Block 7057, Block 7058; Precinct Franklin South, Precinct Highlands, Precinct Millshoal: Tract 9703: Block Group 3: Block 3004; Tract 9704: Block Group 1: Block 1052, Block 1053, Block 1074, Block 1076; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2028, Block 2029, Block 2031; Block Group 3: Block 3043; Precinct Nantahala, Precinct Smithbridge, Precinct Sugarfork, Precinct Union.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of October 20, 2003, to reflect precincts updated as outlined in subsection (c) of this section. However, the boundary corner between Forsyth, Stokes, and Rockingham Counties is as established by Chapter 23, Public Laws of 1848-49.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect with greater accuracy the precincts as they existed as of October 20, 2003, including changes made to precincts after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in several counties. Those changes include actions by county boards of elections to divide, merge, and otherwise realign precincts. Where a realignment of precinct boundaries by a county board of elections is impossible to reflect in the database using Census geography, the Legislative Services Office modified the database by either merging two precincts or by approximating the boundary using Census geography. The following is a list, for informational purposes only, of precincts shown in the TIGER Files, the geography of which has been modified in the Legislative Services Office computer database:

(1) Anson County: All precincts except Burnsville, Peachland, and White Store.
(2) Buncombe County: Asheville 4, 15, 22, 19, Riceville Swannanoa 2 CRU, and Black Mountain 3.
(3) Cabarrus County: 0202 and 1209.
(4) Caldwell County: Lovelady 2.
(5) Carteret County: Cape Carteret, Cedar Point, Indian Beach, Salter Path, Newport 1, and Newport 2.
(6) Caswell County: Yanceyville 2 and Yanceyville 4.
(7) Chatham County: East Williams, North Williams, and West Williams.
(8) Craven County: Havelock.
(9) Cumberland County: Beaver Dam, Cedar Creek, Arran Hills, Cumberland 1, Hope Mills 1, and Stoney Point.
(10) Dare County: Manteo.
(11) Gates County: 1 and 5.
(12) Guilford County: Greensboro 40, North Clay, High Point 19, High Point 20, Center Grove 1, and Summerfield 3.
(13) Hertford County: Murfreesboro 2 and Murfreesboro 3.
(14) Iredell County: Coddle Creek 1 through 4 and Statesville 1 through 6.
(15) Johnston County: East Clayton, Pleasant Grove, and Wilders.
(16) Lee County: West Sanford 2.
(17) Lincoln County: North Brook I/II, Iron Station, Lowesville, Denver, Hickory Grove, Pumpkin Center, and Triangle.
(18) Mecklenburg County: 77, 97, 121, 122, 138, 140, 142, 143, 144, 202, 206, 225, 228, 239, 240, and 242.
(19) Moore County: Eureka and Knollwood.
(20) New Hanover County: Harnett 2 and 8.
(21) Onslow County: Voting Districts Not Defined.
(22) Orange County: Booker Creek, Cedar Falls, Dogwood Acres, and Frank Porter Graham.
(23) Pasquotank County: Precincts Mt. Hermon, Providence, 1A, 1B, 2A, 2B, 3A, 3B, and 4A.
(24) Robeson County: Fairmont 1 and 2 and Red Springs 1 and 2.
(25) Rowan County: Bostian Crossroads, Enochville, Franklin, and Granite Quarry.
(26) Union County: 22 and 33.
(27) Wake County: 01-22, 01-32, 01-43, 04-09, 04-11, 05-00, 07-02, 07-05, 07-06, 08-01, 08-03, 08-04, 09-02, 10-01, 10-02, 12-01, 12-02, 12-04, 13-02, 13-03, 15-01, 15-02, 16-01, 16-04, 17-01, 17-02, 17-05, 17-07, 18-02, 18-03, 19-02, 19-03, 19-04, 20-01, 20-03, 20-04, and 20-06.

The database is available for public inspection, and where it differs from the foregoing list, the database prevails.

In additional instances, precincts shown in the TIGER Files have not been changed geographically, but the names that appear in TIGER have been modified to correct misspellings, to standardize naming, or to reflect more closely the names used by county boards of elections and the State Board of Elections.

(d) If any precinct boundary is changed, that change shall not change the boundary of a house district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C.S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483; 1981, c. 800; c. 1130, s. 1; 1982, Ex. Sess., c. 4; 1982, 2nd Ex. Sess., c. 1; 1984, Ex. Sess., c. 1, ss. 1, 2; c. 6, ss. 1-6; c. 7; 1991, c. 675, s. 1; 1991, Ex. Sess., c. 5, ss. 1, 2; 1993, c. 553, s. 34; 2001-459, s. 1; 2001-487, s. 77; 2002-1, Ex Sess., ss. 1, 2; 2002-2, Ex. Sess., s. 1; 2003-434, 1st Ex. Sess., ss. 1, 2; 2009-78, s. 1.)

District Plans for 2002 Elections. — Session Laws 2002-1 enacted a House Redistricting Plan ("Proposed House Plan - Sutton 5") and a Senate Redistricting Plan ("Proposed Senate Plan - Fewer Divided Counties"), which were created to correct constitutional deficiencies found by the North Carolina Supreme Court in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002), in Sutton House Plan 3 (enacted by Session Laws 2001-458) and in NC Senate Plan 1C (enacted by Session Laws 2001-459). The House and Senate Redistricting Plans were ratified on May 17, 2002, and became Session Laws 2002-1 on May 20, 2002.

Both plans were subsequently held constitutionally invalid by the North Carolina Superior Court in Stephenson v. Bartlett, No. 01 CVS 2885 (N.C. Sup. Ct. May 31, 2002). In their place, the North Carolina Superior Court, on May 31, 2002, presented "Interim House Redistricting Plan for NC 2002 Elections" and "Interim Senate Redistricting Plan for NC 2002 Elections," and ordered that, upon preclearance by the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, the plans be immediately implemented so that the election process could proceed forthwith. Preclearance was received from the United States Department of Justice by letter dated July 12, 2002.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 5, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on February 6, 1992.

Session Laws 2001-459, as amended by Session Laws 2001-487, s. 121.5, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on February 11, 2002.

Session Laws 2002-1 (Extra Session), s. 3, provides: "The plan adopted by Section 1 of this act is effective for the elections for the years 2002, 2004, 2006, 2008, and 2010 unless the United States Supreme Court reverses the decision holding unconstitutional G.S. 120-2 as it existed prior to the enactment of this act (or the decision is otherwise enjoined, made inoperable or ineffective) , and in any such case the prior version of G.S. 120-2 is again effective."

Session Laws 2002-1 (Extra Session), s. 3.3, provides: "If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. Specifically, the provisions of this act adopting a districting plan for the House of Representatives are severable from the provisions of this act adopting a districting plan for the Senate."

The bracketed language in subsection (a) was probably inadvertently omitted when this section was amended, and has been re-inserted in brackets at the direction of the Revisor of Statutes.

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Effect of Amendments. — Session Laws 2009-78, s. 1, effective June 11, 2009, and applicable to elections held on or after January 1, 2010, added the language in the introductory paragraph of subsection (a), and rewrote the paragraphs describing Districts 16 and 18.

CASE NOTES

Constitutionality. — Because the General Assembly enacted its 2001 legislative redistricting plans (Session Laws 2001-458 and 2001-459) in violation of the whole county provisions of N.C. Const., Art. II, § 3(3) and 5(3), these plans are unconstitutional and are therefore void. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

Use of both single-member and multi-member districts within the same redistricting plan violates the Equal Protection Clause of the State Constitution unless it is established that inclusion of multi-member districts advances a compelling state interest; hence the trial court would be directed on remand of action challenging 2001 legislative redistricting plans to afford the opportunity to establish, at an evidentiary hearing, that the use of such districts advances a compelling state interest within the context of a specific, proposed remedial plan. Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, 2002 N.C. LEXIS 420 (2002).

As to the vote diluting effect of a multimember electoral structure, see Thornburg v. Gingles, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

Former section was held valid in Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966), aff'd, 383 U.S. 831, 86 S. Ct. 1237, 16 L. Ed. 2d 298 (1966).

Cited in New Alliance Party v. North Carolina State Bd. of Elections, 697 F. Supp. 904 (E.D.N.C. 1988).

§ 120-2.1. Severability of Senate and House apportionment acts.

If any provision of any act of the General Assembly that apportions Senate or House districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable. (1981, c. 771, s. 1.)

§ 120-2.2. Dividing precincts in Senate and House apportionment acts restricted.

(a) An act of the General Assembly that apportions Senate or House districts after the return of a census may not divide precincts unless an act that apportioned Senate or House districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned Senate or House districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States. (1995, c. 355, s. 1; c. 509, s. 135.2(h).)

Editor's Note. — This section was originally enacted by Session Laws 1995, c. 355, s. 1, as G.S. 120-2.1, effective June 29, 1995. Session Laws 1995, c. 590, s. 135.2(h), recodified this section as G.S. 120-2.2, effective July 29, 1995.

The United States Department of Justice interposed objection to Session Laws 1995, c. 355, which enacted this section.

§ 120-2.3. Contents of judgments invalidating apportionment or redistricting acts.

Every order or judgment declaring unconstitutional or otherwise invalid, in whole or in part and for any reason, any act of the General Assembly that apportions or redistricts State legislative or congressional districts shall find with specificity all facts supporting that declaration, shall state separately and with specificity the court's conclusions of law on that declaration, and shall, with specific reference to those findings of fact and conclusions of law, identify every defect found by the court, both as to the plan as a whole and as to individual districts. (2003-434, 1st Ex. Sess., s. 8.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, made this section effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

CASE NOTES

Constitutionality. — G.S. 120-2.3 and G.S. 120-2.4 are not unconstitutional limitations on the judicial branch, as they allow the General Assembly to exercise its proper responsibilities and they decrease the risk that the courts will encroach upon the responsibilities of the legislative branch, pursuant to N.C. Const. art. I, § 6. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112 (2004).

Court Would Not Redraw Plan. — When the North Carolina Supreme Court held that a redistricting plan was invalid, it declined to redraw the plan as sought by plaintiffs; under G.S. 120-2.3 and G.S. 120-2.4, redrawing was to be left to the legislature. Pender County v. Bartlett, 361 N.C. 491, 649 S.E.2d 364, 2007 N.C. LEXIS 816 (2007).

Appeal. — In reviewing a redistricting case, the Supreme Court of North Carolina followed the directive of G.S. 120-2.3 that each defect in a plan be identified, as the legislature had to know with specificity how a defective district failed to meet constitutional and statutory standards. Pender County v. Bartlett, 361 N.C. 491, 649 S.E.2d 364, 2007 N.C. LEXIS 816 (2007).

§ 120-2.4. Opportunity for General Assembly to remedy defects.

If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two weeks. In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court. (2003-434, 1st Ex. Sess., s. 9.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, made this section effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

CASE NOTES

Constitutionality. — G.S. 120-2.3 and G.S. 120-2.4 are not unconstitutional limitations on the judicial branch, as they allow the General Assembly to exercise its proper responsibilities and they decrease the risk that the courts will encroach upon the responsibilities of the legislative branch, pursuant to N.C. Const. art. I, § 6. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112 (2004).

When the North Carolina Supreme Court held that a redistricting plan was invalid, it declined to redraw the plan as sought by plaintiffs; under G.S. 120-2.3 and G.S. 120-2.4, redrawing was to be left to the legislature. Pender County v. Bartlett, 361 N.C. 491, 649 S.E.2d 364, 2007 N.C. LEXIS 816 (2007).

§ 120-2.5. Direct appeal to Supreme Court.

Appeal lies of right directly to the Supreme Court from any final order or judgment of a court declaring unconstitutional or otherwise invalid in whole or in part and for any reason any act of the General Assembly that apportions or redistricts State legislative or congressional districts. (2003-434, 1st Ex. Sess., s. 10.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

CASE NOTES

Applicability. — G.S. 120-2.5 means that any appeal from a three-judge panel dealing with apportionment or redistricting pursuant to G.S. 1-267.1 is direct to the North Carolina Supreme Court. Pender County v. Bartlett, 361 N.C. 491, 649 S.E.2d 364, 2007 N.C. LEXIS 816 (2007).

§ 120-3. Pay of members and officers of the General Assembly.

(a) The Speaker of the House shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of seventeen thousand forty-eight dollars ($17,048) payable monthly, and an expense allowance of six hundred sixty-six dollars ($666.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars ($13,951) payable monthly, and an expense allowance of five hundred fifty-nine dollars ($559.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70; 1987 (Reg. Sess., 1988), c. 1086, s. 9; 1989, c. 752, s. 26; 1991 (Reg. Sess., 1992), c. 900, s. 35; 1993, c. 321, s. 52; 1993 (Reg. Sess., 1994), c. 769, s. 7.5; 1995, c. 507, s. 7.8; 2002-159, s. 39.)

Editor's Note. — Session Laws 2009-451, s. 26.1A(d), provides: "For the 2009-2010 and 2010-2011 fiscal years, the salaries of members and officers of the General Assembly shall remain the amounts set under G.S. 120-3 in 1994 by the 1993 General Assembly."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 120-3.1. Subsistence and travel allowances for members of the General Assembly.

(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

(1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993.

(2) A travel allowance at the rate which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993, whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

a. Traveling as a representative of the General Assembly or of its committees or commissions, or

b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars ($26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).

(4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission.

(b) Payment of travel and subsistence allowances shall be made to members of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed by the Legislative Services Commission. Claims for travel and subsistence payments shall be paid at such times as may be prescribed by the Legislative Services Commission.

(c) When the General Assembly by joint action of the two houses adjourns to a day certain, which day is more than three days after the date of adjournment, the period between the date of adjournment and the date of reconvening shall for the purposes of this section be deemed to be a period when the General Assembly is not in session, and no member shall be entitled to subsistence and travel allowance during that period, except under circumstances which would entitle him to subsistence and travel allowance when the General Assembly is not in session.

(d) Repealed by Session Laws 1989 (Regular Session 1990), c. 1066, s. 24(a). (1957, c. 8; 1959, c. 939; 1961, c. 889; 1965, c. 86, s. 1; 1969, c. 1257, s. 1; 1971, c. 1200, ss. 1-4; 1973, c. 1482, s. 2; 1977, 2nd Sess., c. 1249, ss. 3, 4; 1979, 2nd Sess., c. 1137, s. 30; 1983, c. 761, ss. 25, 26; 1983 (Reg. Sess., 1984), c. 1034, ss. 184, 186; 1985, c. 479, s. 206; 1985 (Reg. Sess., 1986), c. 1014, s. 40(a); 1987 (Reg. Sess., 1988), c. 1086, s. 30(c); 1989, c. 117; 1989 (Reg. Sess., 1990), c. 1066, s. 24(a); 1991 (Reg. Sess., 1992), c. 900, s. 51; 1993, c. 321, ss. 24(b), (c); 1993 (Reg. Sess., 1994), c. 769, s. 7.28; 1996, 2nd Ex. Sess., c. 18, s. 8(b).)

Cross References. — As to the time of the convening of the Regular Session of the Senate and House of Representatives, see G.S. 120-11.1.

§ 120-4: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 40(b).

§ 120-4.1: Repealed by Session Laws 1973, c. 1482, s. 3.

Editor's Note. — The repeal was effective as of the end of the term of the members of the 1973 General Assembly. For the conditions of the repeal, see G.S. 120-4.2.

§ 120-4.2. Repeal of Legislative Retirement Fund.

(a) Effective as of the end of the term of the members of the 1973 General Assembly, G.S. 120-4.1 is repealed, subject to the following provisions to preserve vested and inchoate rights in the Legislative Retirement Fund:

(b) All persons who have at least four terms of creditable service as of the end of the 1973 term shall be entitled to receive the retirement benefits provided under G.S. 120-4.1 as it existed prior to this repealing act, but no credit shall be given for any service performed after the end of the 1973 term.

(c) Solely for purposes of administering the benefits authorized by G.S. 120-3 to 120-4.2, the authority and duties created by G.S. 120-4.1 as it existed prior to this repealing act shall continue in effect. (1973, c. 1482, s. 3.)

Editor's Note. — Session Laws 1979, c. 467, s. 11, provided that: "Any other provisions of law to the contrary notwithstanding, the State Treasurer shall invest the assets of the Legislative Retirement Fund created by Chapter 1269 of the Session Laws of 1969, as amended by Chapter 905 of the Session Laws of 1971 and Chapter 1482 of the Session Laws of 1973, in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3."

§§ 120-4.3 through 120-4.7: Reserved for future codification purposes.

Article 1A.

Legislative Retirement System.

§ 120-4.8. Definitions.

The following words and phrases as used in this Article, unless the context clearly requires otherwise, have the following meanings:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest as provided in G.S. 135-7(b).

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.

(3) "Annuity" means payment for life derived from the "Accumulated contribution" of a member. All "annuities" are payable in equal monthly installments.

(4) "Annuity reserve" means the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of the mortality tables as adopted by the Board of Trustees, and regular interest.

(5) "Compensation" means salary and expense allowance paid for service as a legislator in the North Carolina General Assembly, exclusive of travel and per diem. Effective July 1, 2009, "compensation" also means payment of military differential wages.

(6) "Filing," when used in reference to an application for retirement, means the receipt of an acceptable application on a form provided by the Retirement System.

(7) "Highest annual salary" means the twelve consecutive months of compensation authorized during a member's final legislative term for the highest position that a member ever held as a member of the General Assembly.

(8) "Medical Board" means the board of physicians provided for in G.S. 135-6, which shall determine disability as provided in this Article.

(9) "Member in service" means a member in service on or after June 15, 1983.

(10) "Pension reserve" means the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of the mortality tables adopted by the Board of Trustees, and regular interest.

(11) "Pensions" means payments for life derived from money provided by the State of North Carolina. All pensions are payable in equal monthly installments.

(12) "Present member of the General Assembly" means a person who is a member of the General Assembly on or after June 15, 1983.

(13) "Regular interest" means interest compounded annually at the rate determined by the Board of Trustees in accordance with G.S. 135-7(b) and G.S. 120-4.10.

(14) "Retirement" means the withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(15) "Year" as used in this Article shall mean the regular fiscal year beginning July 1, and ending June 30 in the following calendar year unless otherwise defined by rule of the Board of Trustees. (1983, c.

761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 198; 1987, c. 738, s. 31(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.29(a); 2009-66, s. 6(h).)

Effect of Amendments. — Session Laws 2009-66, s. 6(h), effective July 1, 2009, added the last sentence of subdivision (5).

§ 120-4.9. Retirement system established.

A Retirement System is established and placed under the Board of Trustees of the Teachers' and State Employees' Retirement System for administrative purposes.

The Retirement System shall have all the power and privileges of a corporation and shall be known as the "Legislative Retirement System of North Carolina." By this name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held. All direction and policies concerning the Legislative Retirement System shall be vested in the Legislative Services Commission. (1983, c. 761, s. 238.)

§ 120-4.10. Administration of retirement system.

The Board of Trustees of the Teachers' and State Employees' Retirement System shall be the trustee of the Retirement System, under the direction of the Legislative Services Commission. The provisions of this Article shall be administered by the Board of Trustees, under the direction of the Legislative Services Commission. (1983, c. 761, s. 238.)

§ 120-4.11. Membership.

The following members of the General Assembly and former members of the General Assembly are eligible for membership in the Retirement System:

(1) Members of the General Assembly who serve on and after June 15, 1983; and

(2) Former members of the General Assembly who served prior to June 15, 1983; and

  a. Who elect to transfer current and future entitlements, or contributions, from the Legislative Retirement Fund established by Chapter 1269 of the 1969 Session Laws; or

  b. Who have five or more years of service as a member of the General Assembly. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 188, 189; 1985, c. 400, ss. 1, 7; 1987 (Reg. Sess., 1988), c. 1109; 2001-424, s. 32.30(a).)

§ 120-4.12. Creditable service.

(a) Creditable service at retirement consists of the membership service rendered by the member of the Retirement System and any prior service purchased or granted by this Article.

(b) Membership Service means the number of years served as a member of the General Assembly as of the establishment of the Retirement System and thereafter. One year of membership service is equal to 12 months for which a legislator received compensation.

(c) Prior service means:

(1) The number of years a present member of the General Assembly served in the General Assembly prior to becoming a member of the Retirement System;

(2) The number of years served by former members of the General Assembly who were vested in the Legislative Retirement Fund. One year of prior service is equal to 12 months for which a legislator received compensation.

(c1) Any member of the Retirement System who was a member of the General Assembly as of January 1985 may purchase prior service credit for the month of January 1985 based upon seven percent (7%) of the compensation received for that period.

(d) Any member of the Retirement System who has eight or more years of creditable service as a member of the General Assembly may purchase prior service credit for service in the armed forces of the United States at the same rates and conditions as set forth in G.S. 120-4.14 and G.S. 120-4.16; provided that credit is allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submits satisfactory evidence of the service claimed and that service credit be allowed only for the period of active service in the armed forces of the United States not creditable in any other retirement system, except the National Guard or any reserve component of the armed forces of the United States.

(e) Any member of the Retirement System who has five or more years of creditable service as a member of the General Assembly may purchase credit for service in the Armed Forces of the United States eligible under subsection (d) of this section by making a lump sum payment into the Annuity Savings Fund equal to the full actuarial cost as provided for in G.S. 135-4(m).

(f) If a member who has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 120-4.33 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System. If a member who has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 120-4.33 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as a member of the General Assembly. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 187, 190; 1989, c. 762, s. 1; 1993, c. 321, s. 71; 2007-179, s. 1(b); 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" near the end of subsection (d).

§ 120-4.12A. Reciprocity of creditable service with other state-administered retirement systems.

(a) Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or Local Governmental Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System; provided, that in the event a person is a retired member of any of the foregoing retirement systems, such creditable service standing to the credit of the retired member prior to retirement shall be likewise counted. In no instance shall service credits maintained in the aforementioned retirement systems be added to the creditable service in this System for application of this System's benefit accrual rate in computing a service retirement benefit unless specifically authorized by this Article.

(b) A person who was a former member of this System and who has forfeited his creditable service in this System by receiving a return of contributions and who has creditable service in the Consolidated Judicial Retirement System, Teachers' and State Employees' Retirement System, or the Local Governmental Employees' Retirement System may count such creditable service for the purpose of restoring the creditable service forfeited in this System under the terms and conditions as set forth in this Article and reestablish membership in this System.

(c) Creditable service under this section shall not be counted twice for the same period of time whether earned as a member, purchased, or granted as prior service credits. (1989 (Reg. Sess., 1990), c. 1066, s. 35(a).)

§ 120-4.13. Transfer of membership and benefits.

(a) The Board of Trustees shall set up procedures to transfer membership from the Legislative Retirement Fund to the Retirement System and to recompute benefits paid to retirees of the Legislative Retirement Fund who elect to transfer to the Retirement System.

(b) The accumulated contributions and creditable service of any member whose service as a member of the General Assembly has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-1(13), of the Teachers' and State Employees' Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Teachers' and State Employees' Retirement System. In order to effect the transfer of a member's creditable service from the Legislative Retirement System to the Teachers' and State Employees' Retirement System, there shall be transferred from the Legislative Retirement System to the Teachers' and State Employees' Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Legislative Retirement System as a result of previous contributions by the employer on behalf of the transferring member.

(c) The accumulated contributions and creditable service of any member whose service as a member of the General Assembly has been or is terminated other than by retirement or death and who, while still a member of this Retirement System, became or becomes a member, as defined in G.S. 135-53(11), of the Consolidated Judicial Retirement System for a period of five or more years may, upon application of the member, be transferred from this Retirement System to the Consolidated Judicial Retirement System. In order to effect the transfer of a member's creditable service from the Legislative Retirement System to the Consolidated Judicial Retirement System, there shall be transferred from the Legislative Retirement System to the Consolidated Judicial Retirement System the sum of (i) the accumulated contributions of the member credited in the annuity savings fund and (ii) the amount of reserve held in the Legislative Retirement System as a result of previous contributions by the employer on behalf of the transferring member. (1983, c. 761, s. 238; 2003-284, s. 30.18(a).)

§ 120-4.14. Purchase of prior service.

Purchase of prior service rendered by a member of the General Assembly before becoming a member of the Retirement System that is not service that may be transferred pursuant to G.S. 120-4.12 shall be at the rate of one month of service for each month for which a legislator received compensation, computed as follows:

(1) For final legislative terms beginning with the 1975 General Assembly, seven percent (7%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum.

(2) For final legislative terms beginning prior to the 1975 General Assembly, five percent (5%) of the highest legislative compensation at the time of purchase plus an administrative fee to be paid in lump sum. (1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 191; 1985, c. 400, s. 2.)

§ 120-4.15. Repayment of contributions.

Repayment of contributions withdrawn from the Legislative Retirement Fund and System shall be at the rate of seven percent (7%) of the highest monthly compensation received as a legislator at the time of purchase for each month of creditable service restored plus an administrative fee to be paid in lump sum. (1983, c. 761, s. 238; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, s. 192.)

§ 120-4.16. Repayments and purchases.

(a) All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible to make such repayments and purchases. All such repayments and purchases not made within two years after the member becomes eligible shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m).

(b) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) Purchase of Service Credits Through Plan-to-Plan Transfers. — Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (1983, c. 761, s. 238; 1987, c. 738, s. 31(b); 2002-71, s. 1.)

Editor's Note. — Session Laws 2002-71, s. 9, provides, in part, that s. 1 of the act becomes effective January 1, 2003, except that G.S. 120-4.16(c), as enacted by s. 1, becomes effective the later of January 1, 2003, or the date upon which the Department of State Treasurer receives a ruling from the Internal Revenue Service approving the direct transfers provided for in that subsection. The Revisor of Statutes is informed that a favorable letter of determination has been received.

§ 120-4.17. Assets of retirement system.

(a) All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of two funds, either the Annuity Savings Fund or the Pension Accumulation Fund.

(b) The Annuity Savings Fund is the fund to which all members' contributions, and regular interest allowances provided for as in G.S. 135-7(b), shall be credited. From this fund shall be paid the accumulated contributions of a member.

(c) Upon the retirement of a member, his accumulated contributions shall be transferred from the Annuity Savings Fund to the Pension Accumulation Fund. In the event that a retired former member should subsequently again become a member of the Retirement System as provided for in G.S. 120-4.11, any excess of his accumulated contributions at his date of retirement over the sum of the retirement allowance payments received by him since his date of retirement shall be transferred from the Pension Accumulation Fund to the Annuity Savings Fund and shall be credited to his individual account in the Annuity Savings Fund.

(d) The Pension Accumulation Fund is the fund in which accumulated contributions by the State and amounts transferred from the Annuity Savings Fund in accordance with subsection (c) of this section and to which all income from the invested assets of the Retirement System are credited. From this fund is paid retirement allowances and any other benefits provided for under this Article except payments of accumulated contributions as provided in G.S. 120-4.14.

(e) The regular interest allowance on the members' accumulated contributions provided for as in G.S. 135-7(b) shall be transferred each year from the Pension Accumulation Fund to the Annuity Savings Fund. (1983, c. 761, s. 238.)

§ 120-4.18. Management of funds.

The Board of Trustees shall manage the fund established by G.S. 120-4.17 pursuant to G.S. 135-7. (1983, c. 761, s. 238.)

§ 120-4.19. Contributions by the members.

Effective upon convening of the 1985 Regular Session of the General Assembly, each member shall contribute by payroll deduction for each pay period for which he receives compensation seven percent (7%) of his compensation for the period.

Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under this section with respect to the services of such members rendered after the effective date of this paragraph. The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the Annuity Savings Fund and accumulated within the Fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in G.S. 120-4.8(1). Picked-up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. (1983, c. 761, s. 238; 1985, c. 400, s. 8.)

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contributions computed as a set percentage of the employees' salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. State Employees Ass'n of N.C., Inc. v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 120-4.20. Contributions by the State.

(a) Effective upon convening of the 1985 Regular Session of the General Assembly, the State shall contribute annually an amount equal to the sum of the "normal contribution" and the "accrued liability contribution."

(b) The normal contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total compensation of the members for the period. The normal contribution rate shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the Retirement System, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, in excess of the part thereof provided by the members' contributions, to (ii) the total annual compensation of the members of the Retirement System.

(c) The accrued liability contribution for any period shall be determined as a percentage, equal to the accrued liability contribution rate, of the total compensation of the members for the period. The accrued liability contribution rate shall be determined as the percentage represented by the ratio of (i) the level annual contribution necessary to amortize the unfunded accrued liability over a period of 15 years, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of

Trustees, to (ii) the total annual compensation of the members of the Retirement System.

(d) The unfunded accrued liability as of any date shall be determined, in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board of Trustees, as the excess of (i) the then present value of the benefits to be provided under the Retirement System in the future over (ii) the sum of the assets of the Retirement System then currently on hand in the Annuity Savings Fund and the Pension Accumulation Fund, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the State.

(e) The normal contribution rate and the accrued liability contribution rate shall be determined after each annual valuation of the Retirement System and shall remain in effect until a new valuation is made.

(f) The annual contributions by the State for any year shall be at least sufficient, when combined with the amount held in the Pension Accumulation Fund at the start of the year, to provide the retirement allowances and other benefits payable out of the fund during the current year. (1983, c. 761, s. 238.)

CASE NOTES

Funding. — Teachers' and State Employees' Retirement System of North Carolina, Consolidated Judicial Retirement System of North Carolina, and Legislative Retirement System are funded by both employee and State, or employer, contributions under G.S. 135-8, 135-68, 135-69, 120-4.19, and 120-4.20; these systems provide for a systematic method of funding of the respective retirement system with employee contributions computed as a set percentage of the employees' salaries, and with systematic employer contributions in accordance with formulas mandated by the retirement statutes, which include calculations by an actuary based on the actuarial valuation of liabilities of the retirement systems. State Employees Ass'n of N.C., Inc. v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 120-4.21. Service retirement benefits.

(a) Eligibility; Application. — Any member may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member may retire with reduced benefits who has reached the age of 50 years with 20 years of creditable service or 60 years with five years of creditable service. The member shall make electronic submission or written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 120 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. — Upon retirement from service in accordance with subsection (a) of this section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(b1) Computation. — Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, but before February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his "highest annual salary," multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(b2) Computation. — Upon retirement from service in accordance with subsection (a) of this section on or after February 1, 1995, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his "highest annual salary", multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (¼ of 1%) for each month his retirement date precedes his 65th birthday.

(3) For a member whose retirement date occurs on or after his 50th birthday and before his 60th birthday and upon completion of 20 years of creditable service, computation as in subdivision (2) of this subsection, reduced by the same percentage as provided for in Article 1 of Chapter 135 of the General Statutes.

(c) Limitations Applicable to Members Retiring Before September 1, 2005. — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary".

(d) Limitations Applicable to Members Retiring on or After September 1, 2005. — In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual salary" nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system. (1993 (Reg. Sess., 1994), c. 769, s. 7.30(p); 2001-424, s. 32.30(b); 2005-276, s. 29.30A(j); 2006-226, ss. 23(a), (b); 2007-431, s. 3; 2009-66, s. 12(k).)

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-66, s. 12(k), effective July 1, 2009, inserted "electronic submission or" in the first sentence of subsection (a).

§ 120-4.22. Disability retirement benefits.

(a) Eligibility; Application. — Upon application by or on behalf of the member, any member in service who has completed at least five years of creditable service and who has not reached his 60th birthday may, after medical certification, be retired on a disability retirement allowance by the Board of Trustees on the first day of the particular calendar month designated by the applicant. The designated date shall be no less than one day nor more than 120 days from the filing of the application.

(b) Medical Certification. — After a medical examination of the member, the medical board shall certify to the Board of Trustees that the member is mentally or physically incapacitated for further performance of duty as a member of the General Assembly, that the incapacity was incurred at the time of active employment and has been continuous thereafter, that the incapacity is likely to be permanent and whether the member should be retired.

(c) Computation. — Upon retirement for disability pursuant to subsection (a) of this section, a member shall receive a disability retirement allowance equal to a service retirement allowance calculated on the basis of the member's "highest annual salary" and the creditable service he would have had by the age of 60 had he continued in service.

(d) Limitations. — In no event shall any member receive a disability retirement allowance greater than seventy-five percent (75%) of his "highest annual salary". (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 195, 196; 1987, c. 513, s. 1; c. 738, s. 31(d); 2001-424, s. 32.30(c); 2009-66, s. 3(l).)

Effect of Amendments. — Session Laws 2009-66, s. 3(*l*), effective July 1, 2009, substituted "120 days" for "90 days" in the last sentence of subsection (a).

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2000, and June 30, 2000.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the

Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2002, and June 30, 2002.

(r) In accordance with subsection (a) of this section, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2003, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2003, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2003, and June 30, 2003.

(s) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2004, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2004, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2004, and June 30, 2004.

(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005.

(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2006, and June 30, 2006.

(v) In accordance with subsection (a) of this section, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2007, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2007. Furthermore, from and after July 1, 2007, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2007, but before June 30, 2007, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2007, and June 30, 2007.

(w) In accordance with subsection (a) of this section, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2008, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 2008. Furthermore, from and after July 1, 2008, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2008, but before June 30, 2008, shall be increased by a prorated amount of two and two-tenths percent (2.2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2008, and June 30, 2008. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d); 2003-284, s. 30.17(c); 2004-124, s. 31.17(c); 2005-276, s. 29.25(c); 2006-66, s. 22.18(b); 2007-323, s. 28.20(c); 2008-107, s. 26.23(c).)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 26.23(c), effective July 1, 2008, added subsection (w).

§ 120-4.23. Reexamination for disability retirement allowance.

Any disability retiree who has not reached age 65 shall be reexamined pursuant to G.S. 135-5(e). After he reaches age 65, no further examinations are required. (1983, c. 761, s. 238.)

§ 120-4.24. Return to membership of former member.

If a retired former member of the Retirement System or of the Legislative Retirement Fund returns to service as a member of the General Assembly, his retirement allowance shall cease and he shall be restored as a member of the Retirement System. The computation of the amount of benefits to which he may subsequently become entitled under this Article shall be computed as follows:

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

(1) For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions.

(2) For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service. (1983, c. 761, s. 238; 1987, c. 738, s. 39(a).)

§ 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service, the sum of his contributions if he has less than five years of creditable service, or the sum of his accumulated contributions if he has five or more years of creditable service, provided he has not in the meantime returned to service. Upon payment of this sum his membership in the System ceases. If he becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons he nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 197; 1987, c. 738, s. 31(e); 1993, c. 531, s. 1; 2009-66, s. 11(k).)

Effect of Amendments. — Session Laws 2009-66, s. 11(k), effective July 1, 2009, inserted "electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by" in the last sentence.

§ 120-4.26. Benefit payment options.

Any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of the retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. No election may be made after the first payment becomes due, or the first retirement check cashed, nor may an election be revoked or a nomination changed. The election of Option 2 or Option 3 or the nomination of the person thereunder shall be revoked if the person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. The election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2 or 3 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent to the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. For Members Retiring Prior to July 1, 1993. — If a member dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one-one hundred twentieth (1/120) for each month for which he has received a retirement allowance payment, shall be paid to his legal representative or to the person he nominates by written designation acknowledged and filed with the Board of Trustees;

Option 2. — Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. If the person selected is other than his spouse, the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. — Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. (1983, c. 761, s. 238; 1985, c. 649, s. 9; 1993, c. 321, s. 74.1(a); 1998-212, s. 28.26(a).)

§ 120-4.26A. Benefits on death after retirement.

In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions of G.S. 120-4.26 and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. (1993, c. 321, s. 74.1(b); 2009-66, s. 11(l).)

Effect of Amendments. — Session Laws 2009-66, s. 11(*l*), effective July 1, 2009, inserted "electronic submission in a form approved by the Board of Trustees or by" in both paragraphs.

§ 120-4.27. Death benefit.

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars ($15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly. "In service" also means service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that service begins during the member's term of office. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars ($10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1983, c. 761, s. 238; 1985, c. 400, s. 9; 1987, c. 824, s. 1; 1998-212, s. 28.27(d); 2004-147, s. 4; 2007-496, s. 3; 2009-66, s. 6(d).)

Effect of Amendments. — Session Laws 2009-66, s. 6(d), effective July 1, 2009, added the last two sentences in the first paragraph.

§ 120-4.28. Survivor's alternate benefit.

The designated beneficiary of a member who dies in service before retirement but after age 60 and after completing five years of creditable service or after completing 12 years of creditable service is entitled to Option 2 prescribed by G.S. 120-4.26. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 199; 1985, c. 400, s. 3; 1987, c. 738, ss. 31(d), 37(c).)

§ 120-4.29. Exemption from garnishment, attachment.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, annuity, or retirement allowance, to the return of contributions, or to the receipt of the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as this Article specifically provides. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a state-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary. (1983, c. 761, s. 238; 1985, c. 402; c. 649, s. 5; 1989, c. 792, s. 2.2; 1991, c. 636, s. 13.)

§ 120-4.30. Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

§ 120-4.31. Internal Revenue Code compliance.

(a) Notwithstanding any other provisions of law to the contrary, compensation for any calendar year after 1988 in which employee or employer contributions are made and for which annual compensation is used for computing any benefit under this Article shall not exceed the higher of two hundred thousand dollars ($200,000) or the amount determined by the Commissioner of Internal Revenue as the limitation for calendar years after 1989; provided the imposition of the limitation shall not reduce a member's benefit below the amount determined as of December 31, 1988.

Effective January 1, 1996, the annual compensation of a member taken into account for determining all benefits provided under this Article shall not exceed one hundred fifty thousand dollars ($150,000) , as adjusted pursuant to section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued under the Code. However, with respect to a person who became a member of the Retirement System prior to January 1, 1996, the imposition of this limitation on compensation shall not reduce the amount of compensation which may be taken into account for determining the benefits of that member under this Article below the amount of compensation which would have been recognized under the provisions of this Article in effect on July 1, 1993.

Effective January 1, 2002, the annual compensation of a person, who became a member of the Retirement System on or after January 1, 1996, taken into account for determining all benefits accruing under this Article for any plan year after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000) or the amount otherwise set by the Internal Revenue Code or determined by the Commissioner of Internal Revenue as the limitation for calendar years after 2002.

(b) Notwithstanding any other provisions of law to the contrary, the annual benefit payable on behalf of a member shall, if necessary, be reduced to the extent required by Section 415(b) and with respect to calendar years commencing prior to January 1, 2000, Section 415(e) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury or his delegate pursuant to Section 415(d) of the Code. If a member is a participant under any qualified defined contributions plan that is required to be taken into account for the purposes of the limitation contained in Section 415 of the Internal Revenue Code, the annual benefit payable under this Article shall be reduced to the extent required by Section 415(e) prior to making any reduction under the defined contribution plan provided by the employer. However, with respect to a member who has benefits accrued under this Article but whose benefit had not commenced as of December 31, 1999, the combined plan limitation contained in Section 415(e) of the Internal Revenue Code shall not be applied to such member for calendar years commencing on or after January 1, 2000.

(c) On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of April 1 of the calendar year following the calendar year that the member attains 70 ½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment.

(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code. (1989, c. 276, s. 1; 1993, c. 531, s. 2; 1995, c. 361, s. 4; 2002-71, s. 2; 2009-66, s. 1(c).)

Effect of Amendments. — Session Laws 2009-66, s. 1(c), effective July 1, 2009, added the last sentence of subsection (d).

§ 120-4.32. Deduction for payments to certain employees' or retirees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. (2002-126, s. 6.4(d).)

§ 120-4.33. Forfeiture of retirement benefits for certain felonies.

(a) Except as provided in G.S. 120-4.12(f), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under the federal laws listed in subsection (b) of this section or the laws of this State listed in subsection (c) of this section if all of the following apply:

(1) The federal or State offense is committed while serving as a member of the General Assembly.

(2) The conduct on which the federal or State offense is based is directly related to the member's service as a member of the General Assembly.

(b) The federal offenses covered by this section are as follows:

(1) A felony violation of 18 U.S.C. § 201 (Bribery of public officials and witnesses), 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (False, fictitious or fraudulent claims), 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States), 18 U.S.C. § 597 (Expenditures to influence voting), 18 U.S.C. § 599 (Promise of appointment by candidate), 18 U.S.C. § 606 (Intimidation to secure political contributions), 18 U.S.C. § 641 (Public money, property, or records), 18 U.S.C. § 666 (Embezzlement and theft), 18 U.S.C. § 1001 (Statements or entries generally), 18 U.S.C. § 1341 (Frauds and swindles), 18 U.S.C. § 1343 (Fraud by wire, radio, or television), 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally), 18 U.S.C. § 1951 (Interference with commerce by threats or violence), 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises), 18 U.S.C. § 1956 (Laundering of monetary instruments), 18 U.S.C.

§ 1962 (Prohibited activities), or section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax).

(2) Reserved for future codification purposes.

(c) The offenses under the laws of this State covered by this section are as follows:

(1) A felony violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening) or G.S. 14-228 (Buying and selling offices), or Part 1 of Article 14 of Chapter 120 of the General Statutes (Code of Legislative Ethics), Article 20 or 22 of Chapter 163 of the General Statutes (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns).

(2) Perjury or false information as follows:

a. Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes an offense within the purview of an offense listed in subdivision (1) of subsection (c) of this section.

b. Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another as specified by subdivision (2) of this subsection.

c. Perjury under Article 22A of Chapter 163 of the General Statutes.

(d) All monies forfeited under this section shall be remitted to the Civil Penalty and Forfeiture Fund. (2007-179, s. 1(a).)

Editor's Note. — Session Laws 2007-179, s. 1(a), enacted this section with a subdivision (b)(1), but no subdivision (b)(2). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-179, s. 5, made this section effective July 1, 2007, and applicable to offenses committed on or after that date.

ARTICLE 2.

Duty and Privilege of Members.

§ 120-5. Presiding officers may administer oaths.

The President of the Senate is authorized to administer oaths for the qualification of Senators and officers of the Senate, and the Speaker of the House of Representatives is authorized to administer oaths for the qualification of all officers of the House and all members who shall appear after the election of Speaker. (1883, c. 19; Code, s. 2855; Rev., s. 4400; C.S., s. 6089.)

§ 120-6. Members to convene at appointed time and place.

Every person elected to represent any county or district in the General Assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (1787, c. 277, s. 1, P.R.; R.C., c. 52, s. 27; Code, s. 2847; Rev., s. 4401; C.S., s. 6090.)

§ 120-6.1. Request that reconvened session not be held.

(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section

5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses.

(b) The form for the requests shall be:

"To the Governor:

A reconvened session to reconsider vetoed legislation is unnecessary.

This ________ day of ________, ________,

________, Member of the [Senate] [House of Representatives]"

Petitions as they are received are public records and shall be maintained by the Office of the Governor. (1995, c. 20, s. 15.1; 1997-1, s. 2.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996 election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 409.

§ 120-7. Penalty for failure to discharge duty.

If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars ($10.00), and two dollars ($2.00) for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the General Assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (1787, c. 277, s. 2, P.R.; R.C., c. 52, s. 28; Code, s. 2848; Rev., s. 4402; C.S., s. 6091.)

§ 120-8. Expulsion for corrupt practices in election.

If any person elected a member of the General Assembly shall by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly. (1801, c. 580, s. 2, P.R.; R.C., c. 52, s. 24; Code, s. 2846; Rev., s. 4403; C.S., s. 6092.)

§ 120-9. Freedom of speech.

The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken. (1787, c. 277, s. 3, P.R.; R.C., c. 52, s. 29; Code, s. 2849; Rev., s. 4404; C.S., 6093; 1991 (Reg. Sess., 1992), c. 1037, s. 1; 2000-140, s. 28.)

Legal Periodicals. — For article analyzing the evolution of First Amendment speech rights in North Carolina, see 4 Campbell L. Rev. 243 (1982).

ARTICLE 3.

Contests.

§ 120-10: Repealed by Session Laws 2005-3, s. 1, effective March 10, 2005.

§ 120-10.1. Contesting a seat.

Except as otherwise provided by rules of the house, a contest of the qualifications as a candidate or election of a member of the House of Representatives or the Senate under Article II, Section 20 of the Constitution shall be conducted in accordance with the provisions of this Article. (2005-3, s. 2.)

§ 120-10.2. Definitions.

As used in this Article, the following terms mean:

(1) Clerk. — The Principal Clerk of the house in which the election of the seat is being contested.

(2) Committee. — The Committee on Rules of the appropriate house unless, by rule, the house has designated another committee to hear contests.

(3) Contest. — A challenge to the apparent election of a member of the General Assembly or a request to determine an undecided election to a seat of the General Assembly in accordance with the provisions of this Article.

(4) Contestant. — An unsuccessful candidate in an election to which this Article applies who initiates a contest.

(5) Contestee. — A candidate in an election to which this Article applies who is not a contestant.

(6) Notice of intent. — The notice required to initiate a contest in accordance with the provisions of this Article.

(7) Unsuccessful candidate. — A candidate for an elective office to which this Article applies who has not been issued a certificate of election. (2005-3, s. 2.)

§ 120-10.3. Initiating a contest.

(a) Who May Initiate. — A contest may be initiated only by a contestant by the filing of a written notice of the intent to petition for a contest in accordance with this section.

(b) When May Initiate. — The notice of intent may be filed no earlier than the date provided in G.S. 163-182.5 for the canvass by the board of elections with jurisdiction for the office under G.S. 163-182.4. The notice of intent must be filed no later than the latter of: (i) 10 days after a certificate of election has been issued, or (ii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes, but in no event may a contestant initiate a contest later than 30 days after the convening of a regular or special session of the General Assembly next after the election.

(c) Content of Notice. — A notice of intent shall state the grounds for the contest. The grounds shall be either or both of the following:

(1) Objections to the eligibility or qualifications of the contestee as a candidate in the election based on specific allegations.

(2) Objections to the conduct or results of the election accompanied by specific allegations that if proven true would have a probable impact on the outcome of the election.

The notice of intent shall also state that a contestee shall file an answer to the notice of intent in accordance with G.S. 120-10.4. The notice of intent shall be signed by the contestant and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. (2005-3, s. 2.)

§ 120-10.4. Answering a notice of intent.

Within 10 days after service of the notice of intent on a contestee, a contestee shall file a written answer with the clerk. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies and any different or additional issues the contestee wants considered. The answer shall be signed by the contestee and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. The failure to file an answer shall be deemed to be a general denial of the allegations. (2005-3, s. 2.)

§ 120-10.5. Filings and service.

The notice of intent to contest shall be filed by the contestant with the clerk and copies thereof served by the contestant on the contestee as provided under Rule 4(j)(1) of the Rules of Civil Procedure. Proof of service shall be filed with the clerk in accordance with G.S. 1-75.10. The answer, petition, and any reply and copies thereof shall be filed with the clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by Rule 5 of the Rules of Civil Procedure. (2005-3, s. 2.)

§ 120-10.6. Discovery.

(a) Depositions. — After service of the notice of intent, any party, after five days notice to the other party or parties may take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with the contestant's petition at any time within 20 days following the date of service of the notice of intent, and a contestee shall complete the taking of the contestee's depositions within 30 days following the date of service of the notice of intent on the contestee. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings and file the same with the clerk.

(b) Witnesses. — Subpoenas for witnesses in a contest shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts. (2005-3, s. 2.)

§ 120-10.7. Petitions.

(a) Filing. — A written petition shall be filed by the contestant with the clerk within 40 days following the date of service of the notice of intent. The petition shall set forth the facts and arguments supporting the case of the contestant. A contestee may file a written reply to the petition within five days following its service on the contestee.

(b) Affidavits. — No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the clerk, pursuant to the written stipulation of the parties or their counsel, on or before the date established by G.S. 120-10.6 for the completion of the taking of depositions by the proponent of the affidavit. (2005-3, s. 2.)

§ 120-10.8. Referral to committee.

(a) Referral. — The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the committee, which documents shall constitute part of the record in the contest. The committee shall hear the contest and conduct such investigation as has been directed by resolution of its house.

(b) Procedure. — The committee shall set a schedule for taking depositions and receiving affidavits. The committee may consider the contestant's and contestee's recommendations for the procedural schedule. The committee may hold hearings and may compel the attendance of witnesses and the production of documents in its inquiry in accordance with Article 5A of this Chapter. The committee may accept the filing of briefs. The committee may order the recount of the ballots in the election and may seek and obtain the assistance of the State Board of Elections in the interpretation and counting of ballots.

(c) Compel Discovery. — No witness in a contest shall be excused from discovering whether the witness voted in the election that is the subject of the contest or the witness's qualification to vote, except as to the witness's conviction for any offense which would disqualify the witness from voting. If the witness was not a qualified voter, the witness shall be compelled to discover for whom the witness voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted in the election.

(d) Report. — The committee shall report its findings as to the law and the facts and make recommendations to the house for its action. (2005-3, s. 2.)

§ 120-10.9. Basis for decision.

(a) Eligibility and Qualification. — If the contest is as to the eligibility or qualifications of the contestee, the house shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(b) Conduct or Results of Election. — If the contest is as to the conduct or results of the election, the house shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall seat that person as a member of the house. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief, as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 163-182.8 shall apply. (2005-3, s. 2.)

§ 120-10.10. Jurisdiction.

A contest of any election held at the same time and place as members of the General Assembly are elected shall be considered by the newly elected house. Any other contest shall be heard by the house sitting at the time of the election. (2005-3, s. 2.)

§ 120-10.11. Judicial proceedings abated.

Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent. (2005-3, s. 2.)

§ 120-10.12. Determination of house not reviewable.

The decision of one of the houses of the General Assembly in determining a contest pursuant to this Article may not be reviewed by the General Court of Justice. (2005-3, s. 2.)

§ 120-10.13. Bad faith costs assessed.

The prevailing party in any contest may recover that party's costs incurred in conjunction with the contest in a civil action, upon a showing that the other party filed, pursued, maintained, or defended the contest in bad faith and without substantial justification. (2005-3, s. 2.)

§ 120-10.14. Applicability.

This Article applies only to a general or special election and does not apply to a primary or any other part of the nominating process. (2005-3, s. 2.)

§ 120-11: Repealed by Session Laws 2005-3, s. 1, effective March 10, 2005.

ARTICLE 3A.

Sessions; Electronic Voting.

§ 120-11.1. Time of meeting.

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the third Wednesday after the second Monday in January next after their election. (1967, c. 1181; 1989 (Reg. Sess., 1990), c. 1066, s. 21.)

Cross References. — For constitutional provision, see N.C. Const., Art. II, § 11.

§ 120-11.2. Installation and use of electronic voting apparatus.

(a) The General Assembly of North Carolina shall, in accordance with rules adopted by each of the respective bodies, vote by use of electronic voting apparatus. The electronic voting apparatus shall be purchased by and installed under the direct supervision of the Legislative Services Commission as soon as is practicable, but in any event the apparatus shall be installed and fully operational as soon as possible after January 1, 1975.

(b) The rules of the House of Representatives and the Senate shall be amended so as to provide for the installation and use of electronic voting apparatus.

(c) Working plans for the installation of electronic voting equipment shall be submitted to the Legislative Services Commission for approval to the end that the architectural integrity of the building may be preserved. (1973, c. 488, ss. 1-3.)

ARTICLE 4.

Reports of Officers to General Assembly.

§ 120-12. Reports from State institutions and departments.

It shall be the duty of the chief officer of each department of the State and of the boards of directors of all institutions supported in whole or in part by appropriations from the State, to submit to the General Assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the Governor, to be transmitted by him with his message to the General Assembly. (1800, c. 557, s. 2, P.R.; Code, s. 2865; Rev., s. 4410; C.S., s. 6099.)

§ 120-12.1. Reports on vacant positions in the Judicial Department and three other departments.

The Judicial Department, the Department of Correction, the Department of Justice, and the Department of Crime Control and Public Safety shall each report by Feburary 1 of each year to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on all positions within that department that have remained vacant for 12 months or more. The report shall include the original position vacancy dates, the dates of any postings or repostings of the positions, and an explanation for the length of the vacancies. (1998-212, s. 16.23.)

Editor's Note. — Session Laws 1998-212, s. 16.23 was codified as this section at the direction of the Revisor of Statutes.

§ 120-13: Repealed by Session Laws 1961, c. 243, s. 1.

ARTICLE 5.

Investigating Committees.

§ 120-14. Power of committees.

Any committee of investigation raised either by joint resolution or resolution of either house of the General Assembly has full power to send for persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise. (1869-70, c. 5, s. 1; Code, s. 2853; Rev., s. 4412; C.S., s. 6100.)

CASE NOTES

Duration of Authority. — In the absence of express enactment otherwise, the existence of a legislative committee necessarily determines upon the adjournment of the body to which it belongs. Commercial & Farmers' Bank v. Worth, 117 N.C. 146, 23 S.E. 160 (1895).

§ 120-15. Chairman may administer oaths.

The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths. (1869-70, c. 5, s. 3; Code, s. 2856; Rev., s. 4413; C.S., s. 6101.)

§ 120-16. Pay of witnesses.

Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents (10¢) for every mile traveling to and from his residence, and ferriage, to be recovered in the district court upon the certificate of the commissioner. (1800, c. 557, s. 2, P.R.; R.C., c. 52, s. 33; Code, s. 2860; Rev., s. 4414; C.S., s. 6102; 1973, c. 108, s. 69.)

§ 120-17. Appearance before committee.

Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the General Assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary. (1868-9, c. 270, s. 10; Code, s. 2858; Rev., s. 4415; C.S., s. 6103.)

§ 120-18. Appeal from denial of right to be heard.

If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he shows good reason for his request the house shall order it to be granted. (1868-9, c. 270, s. 11; Code, s. 2859; Rev., s. 4416; C.S., s. 6104.)

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees or commissions.

Except as provided in G.S. 105-259, all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee. (Resolution 19, 1937, p. 927; 1993, c. 485, s. 37; 2001-491, s. 33.1.)

Study of Public School Funding Formulas. — Session Laws 2008-181, ss. 37.1-37.3, provide: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Session Laws 2009-276, s. 1, provides: "The Joint Legislative Study Committee on Public School Funding Formulas, which was established on November 27, 2007, by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly, and was subsequently modified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications."

Session Laws 2009-276, s. 2, provides: "Notwithstanding G.S. 120-19.6, the Committee may meet during sessions of the General Assembly."

Session Laws 2009-276, s. 3, provides: "The Committee may report to the General Assembly at least once a year on its activities."

Session Laws 2009-276, s. 4, provides: "The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Joint Legislative Study Committee on State Funded Student Financial Aid. — Session Laws 2009-451, s. 9.24(a)-(d), provides: "(a) In order to ensure all North Carolinians have access to attend undergraduate, graduate, and professional degree programs at institutions of higher education there is created the Joint Legislative Study Committee on State Funded Student Financial Aid. The Committee shall consist of 10 members. The Speaker of the House of Representatives shall appoint five members, and the President Pro Tempore of the Senate shall appoint five members. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority shall cooperate with this study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

"The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Committee. The Committee may meet at any time upon the joint call of the cochairs. Vacancies on the Committee shall be filled by the same appointing authority as made the initial appointment.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(b) The Committee shall study all of the following:

"(1) How best to use State funds to provide grants, loans, and scholarships to students for the purpose of attending undergraduate, graduate, and professional degree programs at institutions of higher education within North Carolina. As part of its study, the Committee shall also examine the availability and sustainability of existing State, federal, and private funding sources for student grants, loans, and scholarships.

"(2) How best to administer State funded student financial aid. As part of its study the Committee shall review any action or pending action by the federal government regarding the federal funding that supports the administration of student financial aid in the State. The Committee shall also examine the sustainability and efficiency of the current governance structure for awarding student financial aid at the State level and the linkage of that governance structure to federal student loan programs and to student loan programs funded through escheats.

"(3) The current governance of the North Carolina State Education Assistance Authority (NCSEAA).

"(4) The feasibility of consolidating scholarship, loan, and grant programs for North Carolinians including all programs for which eligibility is based on the Free Application for Federal Student Aid (FAFSA).

"(5) The feasibility of consolidating loans, grants, and scholarships available for teacher education students.

"(6) The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and any other criteria that make the scholarship and grant either similar to other scholarships in the same category or that make the scholarship unique from others in its category.

"(7) Marketing strategies for grant, loans, and scholarships and how to make the information more transparent, understandable, and accessible to the general public and to the students who may be interested in applying for financial aid.

"(8) Any other issues the Committee deems relevant to this study.

"(c) The Committee may make an interim report of its findings and recommendations, including any legislative recommendations, to the 2009 General Assembly, 2010 Regular Session, and shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2011 General Assembly. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

"(d) From the funds appropriated by this act to the General Assembly for the 2009-2010 fiscal year and for the 2010-2011 fiscal year, the Legislative Services Commission may allocate monies to fund the work of the Committee."

Autism Spectrum Disorder and Public Safety Study. — Session Laws 2009-451, s. 10.21D(a)-(i), provides: "(a) There is established the Joint Study Committee on Autism Spectrum Disorder and Public Safety (Committee). The Committee shall consist of members and co-chairs appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

"(b) The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

"(c) The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

"(d) The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

"(e) Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

"(f) The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Funds for the Committee shall be as appropriated to the General Assembly for this purpose.

"(g) The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

"(h) The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

"(i) The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before May 1, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before December 31, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on December 31, 2010, or upon the filing of is final report, whichever occurs first."

Editor's Note. — Session Laws 2007-323, s. 7.42, as added by Session Laws 2007-345, s. 5.3, provides: "(a) There is created the Joint Legislative Study Committee on Public School Funding Formulas. The Committee shall consist of 10 members of the House of Representatives appointed by the Speaker of the House of Representatives and 10 members of the Senate appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Committee.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Committee Membership Not Required of Individual Members of General Assembly. — A member of the General Assembly need not also be a member of a committee of the General Assembly, investigative or otherwise, to invoke this section to gain access to otherwise confidential state personnel information so long as the information sought is or appears necessary to the fulfillment of the requestor's duties and responsibilities as a member of the General Assembly. See opinion of Attorney General to the Honorable John T. Henley, President Pro Tempore of the Senate, and the Honorable Carl J. Stewart, Jr., Speaker of the House of Representatives. 48 N.C.A.G. 84 (1979).

ARTICLE 5A.

Committee Activity.

§ 120-19.1. Hearings; examination of witnesses; counsel.

(a) Committees of either the House or Senate of the General Assembly of North Carolina may hold separate or joint hearings, call witnesses, and compel testimony relevant to any bill, resolution or other matter properly before the committee.

(b) Witnesses may be examined under oath.

(c) When any person is examined before a committee, any member wishing to ask a question must address it to the chairman or presiding officer, who repeats the question or directs the witness to answer the member's question. Staff members or counsel employed by the committee may propound questions to the chairman for a witness to answer.

(d) Objections to the propriety of a question are directed to the committee as a whole. The committee must determine whether the objection is to be sustained or overruled by majority vote of the committee.

(e) When any witness is examined under oath, the proceedings must be taken and transcribed verbatim. Upon request, a witness must be furnished a copy of the transcript of his appearance before the committee.

(f) Witnesses may be accompanied by their own counsel for the purpose of advising them concerning their rights. (1973, c. 543.)

Children's Services Work Group. — Session Laws 2005-276, s. 10.25(h), provides: "It is the intent of the General Assembly to (i) improve the safety and well-being of North Carolina's children, youth, and families; (ii) support collaboration among State, regional, and local agencies that deliver services to children, youth, and families; (iii) make more effective use of existing federal, State, and local resources and programs for children, youth, and families; and (iv) streamline service delivery, fill service gaps, and eliminate duplication of services for children, youth, and families.

"The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and other affected State agencies share responsibility and accountability to assure effective collaboration among State and local agencies to improve outcomes for children and their families leading to full participation in their communities and schools.

"The General Assembly recognizes that services to children, youth, and families are most effective when they are child- and family-centered, strengths-based, community-based, use multidisciplinary approaches, use evidence-based practices when appropriate, and recognize and respect cultural differences. These practices can be successfully implemented only where there is significant and ongoing collaboration and coordination among multiple public agencies. The General Assembly also recognizes that while agencies are making significant progress towards implementing these practices, there is also a need to focus State-level policy in order to provide support, remove barriers, and more fully implement these goals.

"There is established a children's services work group. It shall be located in the Department of Administration for budgetary and staffing purposes only. The Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court shall each designate at least one representative to serve on the work group from among the programs, divisions, or departments under that administrator's control that provide services to children and youth. Each administrator named in the preceding sentence shall also appoint to serve on the work group at least one parent of a child or youth who has or is at risk for behavioral, social, health, or safety problems or academic failure, at least one member of a local collaborative body, and at least one private sector service provider. The Chair of the State Board of Education and the Superintendent of Public Instruction may make joint appointments.

"The work group shall meet at least monthly. The first meeting of the work group shall occur not less than 30 days after the effective date of this section. The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and the Administrative Office of the Courts shall, in this order and on a rotating basis, host the monthly meetings of the work group. The Department of Administration shall provide staff and clerical support to the work group. The work group shall:

"(1) Identify common outcome measures for child-serving agencies that can be used for monitoring the safety, health, and well-being of North Carolina's children, youth, and families, including preventative measures.

"(2) Identify strategies for funding flexibility between State and local agencies, including shared funding streams and the removal of financial and bureaucratic barriers.

"(3) Develop a common service terminology to be used across child-serving agencies that is appropriate and assists collaboration and coordination.

"(4) Make recommendations regarding the creation of a shared database to track population and program outcomes information while protecting individual confidentiality.

"(5) Develop mechanisms that would allow agencies to share information about individual children receiving multiple services. Any recommendations must take into account confidentiality requirements, be voluntary on the part of the party receiving services, and be time-limited. The mechanisms may address intake, assessment, and release procedures.

"(6) Examine State and local training needs for implementing increased coordination and collaboration.

"(7) Study other issues the work group determines would improve coordination and collaboration between child-serving agencies.

"A majority of the work group shall constitute a quorum for the transaction of business.

"Members of the work group shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5 or G.S. 138-6 as appropriate.

"Upon the approval of the Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court, the work group shall submit its findings and recommendations to the Coordination of Children's Services Study Commission created under Section 4 of this act. The work group shall submit an interim report no later than December 15, 2005, and a final report no later than April 15, 2006. The reports shall specify those recommendations that may be implemented without statutory changes and those that would require statutory authorization.

"If the General Assembly has not adjourned by those dates, or if the membership of the Study Commission has not been appointed, the work group shall submit its reports to the Joint Legislative Education Oversight Committee, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

"The work group shall expire upon the filing of the final report."

Coordination of Children's Services Study Commission. — Session Laws 2005-276, s. 10.25(i)-(k) and (m), provides: "(i) There is created the Coordination of Children's Services Study Commission ('Commission'). The Commission shall consist of 18 members appointed as follows:

"(1) Nine members appointed by the Speaker of the House of Representatives as follows:

"a. Five members of the House of Representatives, of whom at least one shall also serve on the House of Representatives Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a House of Representatives Judiciary Committee; and

"b. Four members of the public, including a district court judge, a member of a local collaborative body, a private sector service provider, and a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure.

"(2) Nine members appointed by the President Pro Tempore of the Senate as follows:

"a. Five members of the Senate, of whom at least one shall also serve on the Senate Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a Senate Judiciary Committee; and

"b. Four members of the public, including a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a member of a local board of education, and a member of a board of county commissioners.

"The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment."

"(j) The purpose of the Commission is to study and recommend changes to improve collaboration and coordination among agencies that provide services to children, youth, and families with multiple service needs. The Commission's recommendations shall include mechanisms for establishing clear State leadership, consistent policy direction, and increased accountability at the State and local levels. As part of its work, the Commission shall:

"(1) Identify existing State, regional, and local collaborative bodies (including their charges, scopes of authority, and accountability requirements) that have been created by legislation, administrative rule, or agency policy and that are charged with serving, protecting, or improving the well-being of North Carolina's children, youth, and families. Once it has identified the collaborative bodies, the Commission shall consider how they could be consolidated, reorganized, or eliminated in order to improve their effectiveness and accountability, increase the likelihood that key players will actively participate, and reduce unnecessary duplication of effort. The Commission shall also consider the creation of a mechanism for coordination and communication among the State and local collaborative bodies, incentives for collaboration, clarification of roles among agencies, and ways to monitor the extent to which groups are collaborating.

"(2) Study the practices of agencies currently implementing a system of care platform of practices and make recommendations regarding whether to adopt those practices statewide and across child-serving agencies as the preferred mechanism for providing services to children, youth, and families. In examining this issue, the Commission shall identify those State and local agencies that are currently implementing practices that are consistent with a system of care, those states that have implemented a system of care as a statewide policy initiative, and the extent to which a system of care is cost-effective.

"(3) The Commission shall also examine the following principles that are associated with a system of care and determine whether to recommend the adoption of a State policy that reflects these principles:

"a. Services for children should promote success, safety, and permanence.

"b. Services should be child- and family-centered, giving priority to keeping children with their families, in their home, school, and community.

"c. Services should actively promote early identification and intervention.

"d. Services should be designed to protect the rights of children.

"e. Services shall be integrated and comprehensive, addressing the child's physical, educational, social, and emotional needs through a single child and family team.

"f. Services shall be outcomes-accountable and tied to a unified child and family plan.

"g. Agency resources and services shall be shared and coordinated.

"h. Services shall be provided as close to home as appropriate in the least restrictive setting consistent with what is known to be effective.

"i. Services shall be culturally competent.

"j. Services shall address the unique strengths, needs, and potential of each child and family, and shall be sufficiently flexible to meet highly individualized child and family needs.

"k. Management of the child-serving system is a responsibility shared among all public and private child-serving agencies that should be held collectively accountable for outcomes.

"(4) In reviewing principles relating to a system of care, the Commission shall determine whether they articulate goals that are measurable and if not, determine whether they could be modified to reflect measurable goals.

"(5) Receive and study the recommendations contained in the reports submitted by the work group created in Section 2 of this act and determine whether to recommend any of the statutory proposals.

"(6) Study any other issues the Commission determines would improve coordination and collaboration among child-serving agencies."

"(k) Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Professional staff shall be those assigned to subject areas or agencies involving child-serving programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and the Department of Public Instruction. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The members of the Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1, 138-5, or 138-6 as appropriate."

"(m) The Department shall report on April 1, 2006, and April 1, 2007, on the implementation of subsections (a) through (g) of this section. The Coordination of Children's Services Study Commission, established under this section, shall report annually on April 1. The reports required under this subsection shall be made to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division."

Study of Public School Funding Formulas. — Session Laws 2009-276, s. 1, provides: "The Joint Legislative Study Committee on Public School Funding Formulas, which was established on November 27, 2007, by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly, and was subsequently modified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications."

Session Laws 2009-276, s. 2, provides: "Notwithstanding G.S. 120-19.6, the Committee may meet during sessions of the General Assembly."

Session Laws 2009-276, s. 3, provides: "The Committee may report to the General Assembly at least once a year on its activities."

Session Laws 2009-276, s. 4, provides: "The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Session Laws 2008-181, ss. 37.1-37.3, provide: "37.1. The Joint Legislative Study Committee on Public School Funding Formulas may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

"37.2. The Committee may report to the General Assembly at least once a year on its activities.

"37.3. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas."

Editor's Note. — Session Laws 2007-323, s. 7.42, as added by Session Laws 2007-345, s. 5.3, provides: "(a) There is created the Joint Legislative Study Committee on Public School Funding Formulas. The Committee shall consist of

10 members of the House of Representatives appointed by the Speaker of the House of Representatives and 10 members of the Senate appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Committee.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 120-19.2. Invitations to witnesses; when hearings and examinations held; subpoenas.

(a) Committees of the General Assembly may invite witnesses to appear and testify concerning pending legislation or other matters properly before the committee and may require the attendance of witnesses by subpoena as hereinafter provided. The committee may submit questions in writing to the witness in advance of his appearance. Witnesses may be permitted, in the discretion of the committee, to submit written, sworn statements in addition to or in lieu of sworn oral testimony before the committee.

(b) Hearings and examinations of witnesses concerning pending legislation or other appropriate matter may be conducted during sessions of the General Assembly, during recesses, and in the interim period between sessions, at such times as committees are authorized to convene.

(c) A subpoena for the purpose of obtaining the testimony of a witness may be issued by the chairman of a committee, upon authorization of the Speaker of the House or the Speaker pro tempore of the House for House committees, and the President of the Senate or the President pro tempore of the Senate for Senate committees, and by majority vote of the committee. A subpoena for the purpose of obtaining the testimony of a witness before a joint committee of the House and Senate may be issued by the joint action of the cochairmen of the joint committee, upon authorization of one of the above officers from each house and by majority vote of the joint committee. The subpoena shall be signed by the committee chairman and either the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House and shall be directed to the witness, and state the name of the witness, and a description of any papers, documents, or records that he is required to bring with him; and the subpoena shall state the subject matter of the hearing before the committee, the name of the committee, and the name and address of the committee chairman; and the subpoena shall also clearly designate the date, time, and place at which the witness's presence is required.

(d) Any witness shall have five days' notice of hearing, unless waived by the witness, and subpoenas may be served by a member of the State Bureau of Investigation, the State Highway Patrol, or within their respective jurisdiction by any sheriff or deputy, or any municipal police officer or other law-enforcement officer. In addition, a subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure.

(e) The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina with such additional information or modification as shall be approved by the Legislative Services Commission.

(f) Return of the subpoena shall be to the Legislative Services Officer, where a permanent record shall be maintained for five years, and one copy of the subpoena shall be immediately filed with the committee chairman and one copy transmitted to the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House, as the case may be. (1973, c. 543.)

Editor's Note. — The North Carolina Rules of Civil Procedure, referred to in this section, are found in G.S. 1A-1.

§ 120-19.3. Witness fees and expenses.

Witnesses subpoenaed to testify before a committee of either house of the General Assembly or a joint committee of the General Assembly shall be entitled to the same fees and expenses as are allowable for witnesses in criminal proceedings in the superior court division of the General Court of Justice. (1973, c. 543.)

§ 120-19.4. Failure to respond to subpoena or refusal to testify punishable as contempt.

(a) Any person who without good cause fails to obey a subpoena which was served upon him, or, fails or refuses to testify shall be deemed to be in contempt of the committee and shall be punished as in the case of a civil contempt under the procedures set out in subsection (b). Any person whose action in the immediate presence of the committee directly tends to disrupt its proceedings may also be punished as in the case of a civil contempt under the procedures set out in subsection (b).

(b) If by a majority vote the committee deems that any person is in contempt under the provisions of subsection (a) the committee shall file a complaint signed by the chairman in the General Court of Justice, superior court division, requesting that the court issue an order directing that the person appear within a reasonable time and show good cause why he should not be held in contempt of the committee or its processes. If the person does not establish good cause the court shall punish the person in accordance with the provisions of G.S. 5A-12 or G.S. 5A-21, whichever is applicable. (1973, c. 543; 1977, c. 344, s. 2; 1985, c. 790, s. 5.)

§ 120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.

The President of the Senate or the Speaker of the House may request that the State Bureau of Investigation perform a background investigation on a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives. The person being investigated shall be given written notice by regular mail at least 10 days prior to the date that the State Bureau of Investigation is requested to perform the background investigation by the presiding officer of the body from which the request originated. There is a rebuttable presumption that the person being investigated received the notice if the presiding officer has a copy of the notice. The State Bureau of Investigation shall perform the requested background investigation and shall provide the information, including criminal records, to the presiding officer of the body from which the request originated. A copy of the information also shall be provided to the person being investigated. The term "background investigation" shall be limited to an investigation of a person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Chapter 138A of the General Statutes. (1987, c. 867, s. 2; 2008-213, s. 89.)

Effect of Amendments. — Session Laws 2008-213, s. 89, effective August 15, 2008, substituted "Chapter 138A of the General Statutes" for "Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985)" at the end.

§ 120-19.5. Committee staff assistance.

Upon a certificate of need from the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House and upon request of the committee chairman, the Legislative Services Officer is authorized to assign to any standing committee having interim research, drafting, or hearing assignment one or more members of his staff who shall function as research assistant and counsel to the committee when needed. (1973, c. 543.)

§ 120-19.6. Interim committee activity; rules.

(a) Upon a general directive by resolution of the house in question or upon a specific authorization of either the Speaker of the House, President of the Senate, President Pro Tempore of the Senate or the Speaker Pro Tempore of the House, any standing committee, select committee or subcommittee of either house of the General Assembly is authorized to meet in the interim period between sessions or during recesses of the General Assembly to consider specific bills or resolutions or other matters properly before the committee. No particular form of authority is needed, but this section is intended to promote better coordination by having a system of authorization for meetings of the committees of the General Assembly between sessions or during recesses. Meetings will be held in Raleigh, but with the approval of the Speaker or Speaker Pro Tempore, a House committee may meet elsewhere; and with the approval of the President or President Pro Tempore, a Senate committee may meet elsewhere. In addition, committees may meet at such places as authorized by specific resolution or action of either body of the General Assembly.

(a1) The Speaker of the House or the President Pro Tempore of the Senate may authorize, in writing, the creation of interim study committees to study and investigate governmental agencies and institutions and matters of public policy to assist that chamber in performing its duties in the most efficient and effective manner. The Speaker of the House or the President Pro Tempore of the Senate may appoint members of the relevant chamber, State officers and employees, and members of the public to the interim study committee. An interim study committee created under this subsection shall be deemed a committee of the relevant chamber for the purposes of this Article. Interim study committee members who are State officers and employees or members of the public shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

(b) In all other respects, committees shall function in the interim period between sessions or during recesses in the same manner and under the rules generally applicable to committees of the house in question of the General Assembly during the session of the General Assembly.

(c) Any committee during the interim period that meets upon specific authorization of the Speaker of the House, President of the Senate, President Pro Tempore of the Senate or Speaker Pro Tempore of the House shall limit its activities to those matters contained in the authorization, and shall suspend its activities upon written directive of such officer. Any interim committee that meets upon a directive by resolution of the house in question of the General Assembly shall limit its activities to those matters contained in the authorization. (1973, c. 543; 2001-491, s. 33.2.)

Editor's Note. — Session Laws 2008-181, ss. 41.1 through 41.7, created the Poverty Reduction and Economic Recovery Legislative Study Commission. The act provided for membership of the commission, including nonvoting ex-officio members, set out requirements of the study, and provided for expenses, staffing and duties of the Commission. Session Laws 2008-181, s. 41.7, provides for a final report and termination upon the filing of the report or the convening of the 2010 Regular Session, whichever occurs first.

Session Laws 2008-181, ss. 47.1 through 47.11, created the Epilepsy Patients and Medication Interchange Study Commission to study all facets of the issues involving the protection of epilepsy patients from medication interchange. The act provided for membership, staffing, duties, vacancies, expenses, and hiring of consultants. Session Laws 2008-181, s. 47.11 provides for a final report of findings and recommendations and termination no later than February 1, 2009.

Session Laws 2008-181, ss. 48.1 through 48.5, created the Higher Education Civic Education Study Commission to advise the State on the role of higher education in helping to strengthen and enhance the ability of colleges and universities to participate in civic engagement activities with K11w education institutions, faith-based programs or other service programs affecting the social development and literacy of school-aged children. The act provided for commission membership, powers and duties. Session Laws 2008-181, s. 48.5, provides for a final report, including any proposed legislation, and termination upon the filing of the report or the convening of the 2009 General Assembly, whichever occurs first.

Session Laws 2009-276, s. 2, provides: "Notwithstanding G.S. 120-19.6, the Committee may meet during sessions of the General Assembly." For information about the Joint Legislative Study Committee on Public School Funding Formulas, see the notes under G.S. 115C-1, 120-19, or 120-19.1.

§ 120-19.7. Subcommittees.

By consent and approval of a majority of any committee, the chairman may designate a subcommittee of not less than five persons to conduct hearings, call witnesses, and inquire into any matters properly before the committee. A duly constituted subcommittee shall have all of the powers of the full committee, but any subcommittee shall cease its activities upon majority vote of the full committee, or as provided in G.S. 120-19.6. (1973, c. 543.)

§ 120-19.8. Limitation by resolution of either house.

The provisions of G.S. 120-19.5 pertaining to staff assistance and the provisions of G.S. 120-19.6 pertaining to interim committee activity shall not apply to the House if the House by rule or resolution shall adopt an alternate method of staff assistance or interim committee activity and shall not apply to the Senate if the Senate by rule or resolution shall adopt an alternate method of staff assistance or interim committee activity. Either house of the General Assembly shall have the right to determine any matter concerning the scope of its internal procedure by appropriate rule or resolution without the joinder of the other. (1973, c. 543.)

§ 120-19.9. Local acts affecting State highway system to be considered by transportation committees.

Any local bill affecting the State highway system shall, prior to its passage, be referred to a committee of either the House or Senate charges with the responsibility of examining bills or issues related to transportation or to the State highway system. (1987, c. 747, s. 24.)

ARTICLE 6.

Acts, Journals, and Reports to the General Assembly.

§ 120-20. When acts take effect.

Acts of the General Assembly shall be in force only from and after 60 days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (1799, c. 527, P.R.; R.C., c. 52, s. 35; 1868-9, c. 270, s. 1; Code, s. 2862; Rev., s. 4417; C.S., s. 6105; 1995, c. 20, s. 3.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

Session Laws 2009-273, s. 1, provides: "The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly and the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral."

CASE NOTES

Where an act declares that it is to be in force from and after its ratification, instead of its passage, then the day on which it is ratified by the signatures of the speakers of the two houses is the day from and after which the act is in force. Hamlet v. Taylor, 50 N.C. 36 (1857), holding that an act which provides that it shall be in force from and after its passage takes effect from the first day of the session at which it was passed.

Where a statute is to be in force from and after its ratification it will be held effective from the first moment of the day of its enactment, in the absence of evidence of the precise time; such evidence, however, will always be received when required for the prevention of a wrong or the assertion of a meritorious right. Lloyd v. North Carolina R.R., 151 N.C. 536, 66 S.E. 604 (1909).

Cited in Johnson v. First Union Corp., 128 N.C. App. 450, 496 S.E.2d 1 (1998).

§ 120-20.1. Coded bill drafting.

(a) Whenever in any act:
- (1) It is stated that:
  - a. A law "reads as rewritten:"; or
  - b. Laws "read as rewritten:"; and
- (2) The law is set out showing material struck through or underlined, or both

the material struck through is being deleted from the existing law, and the material underlined is being added to the existing law.

(b) Notwithstanding subsection (a) of this section, underlining in a column heading is existing law, and a double underline shows a column heading being added to existing law.

(b1) In any part of a law enacted in the format provided by this section, the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict.

(b2) In any act ratified on or after January 11, 1989, when a new section, subsection, or subdivision is added to the General Statutes, and that section, subsection, or subdivision is underlined, the underlining is not part of the law, but merely an illustration that the material in the bill which enacted the law is new.

(c) As used in this section "act" and "law" also includes joint and simple resolutions.

(d) This section applies to acts ratified on or after February 9, 1987. (1987, c. 138; c. 485, s. 4; 1989, c. 770, s. 40; 2001-487, s. 78.)

§§ **120-21, 120-22:** Repealed by Session Laws 1969, c. 1184, s. 8.

§§ **120-23 through 120-25:** Transferred to G.S. 147-43.1 to 147-43.3 by Session Laws 1943, c. 543.

Editor's Note. — Sections 147-43.1 to 147-43.3, referred to above, were repealed by Session Laws 1969, c. 1184, s. 8. For present provisions as to printing of session laws, see G.S. 120-34.

§ **120-26:** Repealed by Session Laws 1943, c. 543.

§ 120-27. Journals; preparation and filing by clerks of houses.

It shall be the duty of the principal clerks of the two houses of the General Assembly to hasten the preparation of their journals for the printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the Secretary of State. (1872-3, c. 45, ss. 2, 3; Code, ss. 3627, 3628; Rev., s. 5100; C.S., s. 7299.)

§ 120-28. Journals indexed by clerks.

The principal clerks of the two houses of the General Assembly shall provide full and complete indexes for the journals of their respective houses. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 4421; C.S., s. 6112.)

§ 120-29. Journals deposited with Secretary of State.

The principal clerks of the Senate and House of Representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the Secretary of State the journals of the General Assembly; and the Secretary of State shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant. (1819, c. 1020, P.R.; R.C., c. 52, s. 36; Code, s. 2867; Rev., s. 4420; C.S., s. 6113.)

Editor's Note. — Session Laws 2009-129, s. 1, stated in its prefatory language that "G.S. 120-29(2) reads as rewritten." There is no subdivision (2) in G.S. 120-29, and it appears that the amendment was intended for G.S. 120-129(2). The amendment would have inserted "students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission," in subdivision (2). The amendment has not been implemented at the direction of the Revisor of Statutes.

§ 120-29.1. Approval of bills.

(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved ______.m. this ______ day of ______, ______ " and shall sign the same as follows: "______ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for his signature on the ______ day of ______, ______ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This ______ day of ______, ______, ______ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, ______ this ______ day of ______, ______". The principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included. (1995, c. 20, s. 2; 1997-1, s. 3.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995, c. 20, s. 2 having been 120-29.2.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 409.

§ 120-29.5. State agency reports to the General Assembly.

Whenever a report is directed by law or resolution to be made to the General Assembly, the State agency preparing the report shall deliver one copy of the report to each of the following officers: the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the House Principal Clerk, and the Senate Principal Clerk; and two copies of the report to the Legislative Library. The State agency is encouraged to inform members of the General Assembly that an electronic copy is available. This section does not affect any responsibilities for depositing documents with the State Library or the State Publications Clearinghouse under Chapter 125 of the General Statutes. (2004-203, s. 49(b).)

§ 120-30: Repealed by Session Laws 1961, c. 24.

ARTICLE 6A.

Submission of Acts.

§§ 120-30.1 through 120-30.9: Repealed by Session Laws 1965, c. 1142.

§ 120-30.9A. Purpose.

The purpose of this Article is to ensure compliance with Section 5 of the Voting Rights Act of 1965 by designating certain officials who shall submit to the Attorney General of the United States any statute enacted by the General Assembly or action taken by any local government which affects any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, in any jurisdiction covered by Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

Editor's Note. — Article 6A.1 was renumbered as Article 6A pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 120-30.9B. Statewide statutes; State Board of Elections.

(a) The Executive Director of the State Board of Elections shall seek approval as required by 42 U.S.C. § 1973c for all of the following:

(1) Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes or as provided in subsection (b) of this section, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163-132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965.

(b) With respect to acts of the General Assembly that amend, delete, add to, modify, or repeal any provision relating to apportioning or redistricting of State legislative or congressional districts, the Attorney General of North Carolina shall seek approval of the plan as required by 42 U.S.C. § 1973c. (1985, c. 579, s. 1; 1989, c. 440, s. 4; 1995, c. 20, s. 4; 2001-319, s. 11; 2003-434, 1st Ex. Sess., s. 12.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

§ 120-30.9C. The judicial system; Administrative Office of the Courts.

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1; 1995, c. 20, s. 5.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

CASE NOTES

Cited in Blankenship v. Bartlett, 184 N.C. App. 327, 646 S.E.2d 584, 2007 N.C. App. LEXIS 1452 (2007).

§ 120-30.9D. Constitutional amendments; Secretary of State.

The Secretary of State shall submit to the Attorney General of the United States within 30 days of ratification all acts of the General Assembly that amend the North Carolina Constitution and which constitute a "change affecting voting" under Section 5 of the Voting Rights Act of 1965. (1985, c. 579, s. 1.)

§ 120-30.9E. Counties; County Attorney.

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that county. (1985, c. 579, s. 1; 1995, c. 20, s. 6.)

Local Modification. — Beaufurt County: 1997-1(b).

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

§ 120-30.9F. Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition. (1985, c. 579, s. 1; 1989, c. 598, s. 4; 1995, c. 20, s. 7.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

§ 120-30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney.

(a) The State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(b) The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the local boards of education which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved. (1985, c. 579, s. 1; 1991, c. 529, s. 2; 1995, c. 20, s. 8.)

Local Modification. — Beaufort County: 1997-2(b).

Editor's Note. — Session Laws 1991, c. 529, which amended this section, in section 6 provides: "If any section or provision of this act is declared invalid under section 5 of the Voting Rights Act of 1965, or unconstitutional by the courts, it does not affect the validity of this act as a whole, or any part other than the part declared to be unconstitutional or invalid."

Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

Section 115C-64.4 referred to in subsection (a) has been repealed.

§ 120-30.9H. Decision letters of U.S. Attorney General published in North Carolina Register.

All letters and other documents received by the authorities required by this Article to submit any "changes affecting voting" from the Attorney General of the United States in which a final decision is made concerning a submitted "change affecting voting" shall be filed with the Director of the Office of Administrative Hearings. The Director shall publish the letters and other documents in the North Carolina Register. (1985 (Reg. Sess., 1986), c. 1032, s. 11.)

§ 120-30.9I. Alternate submission authority.

Notwithstanding any other provision of this Article, in the event that the person or party responsible under G.S. 120-30.9E, 120-30.9F, or 120-30.9G for submitting any local act of the General Assembly shall delay, obstruct, or refuse to make a submittal to the Attorney General of the United States, the Attorney General of North Carolina may submit that local act. Any person or party responsible under this Article for making such a submission shall promptly provide any information and materials the Attorney General of North Carolina might request to facilitate making the submission and making any supplements to the submission. (1991, c. 761, s. 21.1.)

Article 6B.

Legislative Research Commission.

§ 120-30.10. Creation; appointment of members; members ex officio.

(a) There is hereby created a Legislative Research Commission to consist of five Senators to be appointed by the President pro tempore of the Senate and five Representatives to be appointed by the Speaker of the House. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Research Commission. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Research Commission, shall serve ex officio as a member of the Commission and shall perform the duties otherwise vested in the President pro tempore by G.S. 120-30.13 and 120-30.14.

(b) The cochairmen of the Legislative Research Commission may appoint additional members of the General Assembly to work with the regular members of the Research Commission on study committees. The terms of the additional study committee members shall be limited by the same provisions as apply to regular commission members, and they may be further limited by the appointing authorities.

(c) The cochairmen of the Legislative Research Commission may appoint persons who are not members of the General Assembly to advisory subcommittees. The terms of advisory subcommittee members shall be limited by the same provisions as apply to regular Commission members, and they may be further limited by the appointing authorities. (1965, c. 1045, s. 1; 1975, c. 692, s. 1.)

§ 120-30.11. Time of appointments; terms of office.

Appointments to the Legislative Research Commission shall be made not earlier than the close of each regular session of the General Assembly held in the odd-numbered year nor later than 15 days subsequent to the close. The term of office shall begin on the day of appointment, and shall end on January 15 of the next odd-numbered year. No moneys appropriated to the Legislative Research Commission may be expended for meetings of the Commission, its committees or subcommittees held after January 15 of the next odd-numbered year and before the appointment of the next Legislative Research Commission. (1965, c. 1045, s. 2; 1975, c. 692, s. 2; 1977, c. 915, s. 4; 1981, c. 688, s. 19; 1983, c. 63, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 178; 1991 (Reg. Sess., 1992), c. 900, s. 16.)

§ 120-30.12. Vacancies.

Vacancies in the appointive membership of the Legislative Research Commission occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Commission. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy.

If for any reason the office of President pro tempore of the Senate becomes vacant, the five Senate members of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this Article, and such Senator so elected shall serve until the Senate shall elect a President pro tempore. If for any reason the office of Speaker of the House of Representatives becomes vacant, the five members of the House of Representatives of the Legislative Research Commission shall elect one of their own number to perform and exercise the duties imposed and powers granted pursuant to this Article, and such member of the House of Representatives so elected shall serve until the House of Representatives shall elect a Speaker. (1965, c. 1045, s. 3; 1969, c. 1037.)

§ 120-30.13. Cochairmen; rules of procedure; quorum.

The President pro tempore of the Senate and the Speaker of the House shall serve as cochairmen of the Legislative Research Commission. The Commission shall adopt rules of procedure governing its meetings. Eight members, including ex officio members, shall constitute a quorum of the Commission. (1965, c. 1045, s. 4.)

§ 120-30.14. Meetings.

The first meeting of the Legislative Research Commission shall be held at the call of the President Pro Tempore of the Senate in the State Legislative Building or in another building designated by the Legislative Services Commission. Thereafter the Commission shall meet at the call of the chairmen. Every member of the preceding General Assembly has the right to attend all sessions of the Commission, and to present his views at the meeting on any subject under consideration. (1965, c. 1045, s. 5; 1981, c. 772, s. 1.)

§ 120-30.15: Repealed by Session Laws 1969, c. 1184, s. 8.

§ 120-30.16. Cooperation with Commission.

The Legislative Research Commission may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall cooperate with the Commission and its committees to the fullest possible extent. (1965, c. 1045, s. 7.)

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it. (1965, c. 1045, s. 8; 1969, c. 1184, s. 8; 1977, c. 915, s. 3; 1981, c. 688, s. 2; 1983, c. 905, s. 7; 1985, c. 790, s. 7.)

§ 120-30.18. Facilities; compensation of members; payments from appropriations.

The facilities of the State Legislative Building, and any other State office building used by the General Assembly, shall be available to the Commission for its work. Members of the General Assembly serving on the Legislative

Research Commission or its study committees shall be reimbursed for travel and subsistence expenses at the rates set out in G.S. 120-3.1. Advisory subcommittee members shall be reimbursed and compensated at the rates set out in G.S. 138-5 (public members) and G.S. 138-6 (State officials or employees). All expenses of the Commission shall be paid from funds appropriated for the Commission. (1965, c. 1045, s. 9; 1975, c. 692, s. 3; 1981, c. 772, s. 2.)

§§ 120-30.19 through 120-30.23: Reserved for future codification purposes.

Article 6C.

Review of Administrative Rules.

§§ 120-30.24 through 120-30.28: Repealed by Session Laws 1983, c. 927, s. 2.

§ 120-30.29: Repealed by Session Laws 1981, c. 688, s. 8.

§ 120-30.29A: Repealed by Session Laws 1983, c. 927, s. 2.

§§ 120-30.30, 120-30.31: Repealed by Session Laws 1981, c. 688, s. 8.

§ 120-30.32: Repealed by Session Laws 1983, c. 927, s. 2.

§ 120-30.33: Repealed by Session Laws 1981, c. 688, s. 8.

§§ 120-30.34 through 120-30.40: Repealed by Session Laws 1983, c. 927, s. 2.

Article 6D.

Local Government Fiscal Information Act.

§ 120-30.41. Short title.

This Article may be cited as the "Local Government Fiscal Information Act." (1979, 2nd Sess., c. 1262, s. 1.)

§ 120-30.42. Definitions.

For the purposes of this Article, "unit of local government" means counties, cities, towns, and incorporated villages, sanitary districts, mosquito control districts, hospital districts, metropolitan sewerage districts, metropolitan water districts, county water and sewer districts, special airport districts, water and sewer authorities, county boards of education and city boards of education. (1979, 2nd Sess., c. 1262, s. 2.)

§ 120-30.43. Purpose.

It is the purpose of this Article to provide procedures for the preparation and distribution of fiscal information on bills, resolutions, amendments to bills and resolutions or rules which if enacted or adopted would have a fiscal impact on the units of local government of this State. (1979, 2nd Sess., c. 1262, s. 3.)

§ 120-30.44. Fiscal note defined.

For purposes of this Article, "fiscal note" means a realistic statement of the estimated effect on the expenditures or revenues of units of local government of implementing or complying with a proposed bill, resolution or rule. (1979, 2nd Sess., c. 1262, s. 4.)

§ 120-30.45. Fiscal note on legislation.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate. (1979, 2nd Sess., c. 1262, s. 5; 1995, c. 415, s. 6; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 120-30.46. Fiscal information related to requests for State appropriations.

Any State department, institution, agency, or other authority making requests for State appropriations to fund changes in existing programs or for implementing new programs shall, if such changes or new programs would require local expenditures, incorporate as a part of the information submitted in support of the request a statement of the estimated fiscal effect on the units of local government. (1979, 2nd Sess., c. 1262, s. 6.)

§ 120-30.47. Legislation introduced by request.

Any State department, institution, agency, or other authority requesting a member or members of the General Assembly to introduce legislation which if enacted would have a fiscal impact on the units of local government of this State shall furnish to such member or members, and to the Fiscal Research Division, a fiscal note containing a realistic estimate of the effect of the measure for the ensuing two fiscal periods. (1979, 2nd Sess., c. 1262, s. 7.)

§ 120-30.48. Fiscal impact of administrative rules.

An agency is required to prepare a fiscal note on a proposed administrative rule that affects the expenditures or revenues of a unit of local government as provided in G.S. 150B-21.4. (1979, 2nd Sess., c. 1262, s. 8; 1987, c. 827, ss. 1, 55; 1991, c. 418, s. 13.)

§ 120-30.49. Compiling federal mandates; annual report.

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

(1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;

(2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and

(3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. (1995, c. 415, s. 7; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

Article 7.

Legislative Services Commission.

§ 120-31. Legislative Services Commission organization.

(a) The Legislative Services Commission shall consist of the President pro tempore of the Senate, seven Senators appointed by the President pro tempore of the Senate, the Speaker of the House of Representatives, and seven Representatives appointed by the Speaker of the House of Representatives. The President pro tempore of the Senate, and the Speaker of the House shall serve until the selection and qualification of their respective successors as officers of the General Assembly. The initial appointive members shall be appointed after the date of ratification of this Article and each shall serve for the remainder of his elective term of office and until his successor is appointed or until he ceases to be a member of the General Assembly, whichever occurs first. A vacancy in one of the appointive positions shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. In the event the office of Speaker becomes vacated, the seven Representatives shall elect one of themselves to perform the duties of the Speaker as required by this Article. In the event the office of President pro tempore becomes vacated, the seven Senators shall elect one of themselves to perform the duties of President pro tempore as required by this Article. Members so elevated shall perform the duties required by this Article until a Speaker or a President pro tempore is duly elected by the appropriate house.

(b) The President pro tempore of the Senate shall be the chairman of the Commission in odd-numbered years and the Speaker of the House of Representatives shall be chairman of the Commission in even-numbered years.

(c) The Commission may elect from its membership such other officers as it deems appropriate, and may appoint other members of the General Assembly to serve on any committee of the Commission.

(d) The Commission may adopt rules governing its own organization and proceedings.

(e) Members of the Commission, when the General Assembly is not in session, shall be reimbursed for subsistence and travel allowance as provided for members of the General Assembly when in session for such days as they are engaged in the performance of their duties. (1969, c. 1184, s. 1; 1971, c. 1116, ss. 1-3; 1999-431, s. 3.6(a).)

Cross References. — As to authorization for the Legislative Services Commission and the Administrative Office of the Courts to establish safety and health programs for their employees, see G.S. 143-589.

Editor's Note. — Session Laws 1999-431, s. 3.6(b), provides that the initial terms of the two additional members of the Legislative Services Commission added in subsection (a) in 1999 shall begin on appointment.

Session Laws 1999-431, s. 4, provides that unless otherwise provided for in the act, appointments are for terms to begin when the bill becomes law.

§ 120-32. Commission duties.

The Legislative Services Commission is authorized to:

(1) Determine the number, titles, classification, functions, compensation, and other conditions of employment of the joint legislative service employees of the General Assembly, including but not limited to the following departments:
  a. Legislative Services Officer and personnel.
  b. Electronic document writing system.
  c. Proofreaders.
  d. Legislative printing.
  e. Enrolling clerk and personnel.
  f. Library.
  g. Research and bill drafting.
  h. Printed bills.
  i. Disbursing and supply.
  j. Program evaluation.

  Temporary employees of the General Assembly are exempt from the provisions of G.S. 135-3(8)c., as to compensation earned in that status.

(2) Determine the classification and compensation of employees of the respective houses other than staff elected officers; however, the hiring of employees of each house and their duties shall be prescribed by the rules and administrative regulations of the respective house;

(3) Acquire and dispose of furnishings, furniture, equipment, and supplies required by the General Assembly, its agencies and commissions and maintain custody of same between sessions. It shall be a Class 1 misdemeanor for any person(s) to remove any state-owned furniture, fixtures, or equipment from the State Legislative Building for any purpose whatsoever, except as approved by the Legislative Services Commission;

(4) Contract for services required for the operation of the General Assembly, its agencies, and commissions; however, any departure from established operating procedures, requiring a substantial expenditure of funds, shall be approved by appropriate resolution of the General Assembly;

(5) a. Provide for engrossing and enrolling of bills,
  b. Appoint an enrolling clerk to act under its supervision in the enrollment and ratification of acts;

(6) a. Provide for the duplication and limited distribution of copies of ratified laws and joint resolutions of the General Assembly and forward such copies to the persons authorized to receive same,
  b. Maintain such records of legislative activities and publish such documents as it may deem appropriate for the operation of the General Assembly;

(7) a. Provide for the indexing and printing of the session laws of each regular, extra or special session of the General Assembly and provide for the printing of the journal of each house of the General Assembly,
  b. Provide and supply to the Secretary of State such bound volumes of the journals and session laws and of these publications in electronic format as may be required by the Secretary of State to be distributed under the provisions of G.S. 147-45, 147-46.1 and 147-48.

(8) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 40(c).

(9) To establish a bill drafting division to draft bills at the request of members or committees of the General Assembly.

(10) To select the locations for buildings occupied by the General Assembly, and to name any building occupied by the General Assembly.

(11) To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under G.S. 143C-1-2.

(12) Provide insurance to provide excess indemnity for any occurrence which results in a claim against any member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act by a member, nor for any act committed by a member or former member prior to the inception of insurance.

(13) Provide insurance to provide excess indemnity for any occurrence that results in a claim against any employee, officer, or committee, subcommittee, or commission member in the legislative branch other than a member of the General Assembly, as provided in G.S. 143-300.2 through G.S. 143-300.6. That insurance may not provide for any indemnity to be payable for any claim not covered by the above cited statutes, nor for any criminal act, nor for any act committed prior to the inception of insurance. (1969, c. 1184, s. 2; 1971, c. 685, s. 2; c. 1200, s. 8; 1977, c. 802, s. 50.60; 1981 (Reg. Sess., 1982), c. 1191, s. 67; 1983 (Reg. Sess., 1984), c. 1034, s. 182; 1985, c. 479, s. 176(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 40(c); 1993, c. 539, s. 912; 1994, Ex. Sess., c. 24, s. 14(c); 2001-424, s. 32.21A(a); 2001-513, s. 16(c); 2006-203, s. 59; 2007-78, s. 1.)

Cross References. — As to employment and supervision of members of covered person's or legislative employee's extended family, see G.S. 138A-40.

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 59, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "G.S. 143C-1-2" for "G.S. 143-18" in subdivision (11).

OPINIONS OF ATTORNEY GENERAL

Authority of Legislative Services Commission to Purchase Electronic Voting Equipment. — See opinion of Attorney General to the Honorable Philip P. Godwin, Chairman, Legislative Services Commission, 40 N.C.A.G. 297 (1970).

§ 120-32.01. Information to be supplied.

(a) Every State department, State agency, or State institution shall furnish the Legislative Services Office and the Research, Fiscal Research, Program Evaluation, and Bill Drafting Divisions any information or records requested by them and access to any facilities and personnel requested by them. Except when accessibility is prohibited by a federal statute, federal regulation, or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and these divisions access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System by the Research, Bill Drafting, and Program Evaluation Divisions shall only be through the Fiscal Research Division.

(c) Consistent with subsection (a) of this section and notwithstanding any other law relating to privacy of personnel records, the Retirement Systems Division of the Department of State Treasurer shall furnish the Fiscal Research Division direct online read-only access to active and retired member information or records maintained by the Retirement Systems Division in online information systems. Direct online read-only access shall not include access to medical records of individual members. Nothing in this subsection shall limit the provisions of subsection (a) of this section. (1983 (Reg. Sess., 1984), c. 1034, s. 177; 1996, 2nd Ex. Sess., c. 18, s. 8.2; 2007-78, s. 2; 2007-103, s. 1.)

§ 120-32.02. Legislative commissions' and committees' employees and consultants.

(a) In the construction of a statute creating, continuing, or modifying a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the creation, continuation, or modification of the commission or committee shall not be construed as a grant of authority to the commission or committee to hire its own employees or to contract for consultant or other services.

(b) Notwithstanding any other provision of law, a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement and which has the power to contract for consultants or hire employees, or both, may contract for consultants, or hire employees, or both, only upon the prior approval of the Legislative Services Commission. A contract for employment or consultant services by such a commission or committee is void and unenforceable unless approved by the Legislative Services Commission prior to the contract being entered into.

(c) This section shall not apply to contracts of employment or for consultant services for standing or select committees of either house of the General Assembly, or subcommittees thereof, which shall be entered into by either the Speaker of the House or the President Pro Tempore of the Senate, as appropriate, and governed by the provisions of G.S. 120-35. (1987 (Reg. Sess., 1988), c. 1100, s. 9.1.)

§ 120-32.03. Grants and contributions to legislative commissions and committees.

(a) In the construction of a statute creating, continuing, or modifying a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the creation, continuation, or modification of the commission or committee shall not be construed as a grant of authority to the commission or committee to apply for, receive or accept grants, loans, and advances of non-State funds, or to receive and accept contributions from any source, of money, property, labor, or any other thing of value in order for it to conduct its work.

(b) Notwithstanding any other provision of law, a commission or committee whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement may, only with specific approval of the Legislative Services Commission, apply for, receive, or accept grants and contributions, from any source, of money, property, labor, or any other thing of value, to be held and used for the purposes set forth in the act creating the commission or committee. Any thing of value remaining at the termination of the commission or committee shall be deposited with the Legislative Services Commission to be employed for the use of the General Assembly. (1987 (Reg. Sess., 1988), c. 1100, s. 9.1.)

§ 120-32.1. Use and maintenance of buildings and grounds.

(a) The Legislative Services Commission shall:

(1) Establish policy for the use of the State legislative buildings and grounds;
(2) Maintain and care for the State legislative buildings and grounds, but the Commission may delegate the actual work of the maintenance of those buildings and grounds to the Department of Administration, which shall perform the work as delegated;
(3) Provide security for the State legislative buildings and grounds;
(4) Allocate space within the State legislative buildings and grounds; and
(5) Have the exclusive authority to assign parking space in the State legislative buildings and grounds.

(b) The Legislative Services Officer shall have posted the rules adopted by the Legislative Services Commission under the authority of this section in a conspicuous place in the State Legislative Building and the Legislative Office Building. The Legislative Services Officer shall have filed a copy of the rules, certified by the chairman of the Legislative Services Commission, in the office of the Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules shall constitute notice to all persons of the existence and text of the rules. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor.

(c) The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State legislative buildings and grounds in violation of the rules of the Legislative Services Commission and may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased.

(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:
  a. The State Legislative Building;
  a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.
  a2. The areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;
  b. The Legislative Office Building, which shall include the following areas:
    1. The garden area and outer stairway;
    2. The loading dock area bounded by the wall on the east abutting the Halifax Street Mall, the southern edge of the

southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and
4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;

c. Any State-owned parking lot which is leased to the General Assembly;

d. The bridge between the State Legislative Building and the Halifax Street Mall;

e. A portion of the brick sidewalk surface area of the Halifax Street Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the grassy area of the Mall, thence east along the inner edge of the sidewalk adjacent to the southern outer edge of the grassy area of the Mall to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning; and

f. From the center of Lane Street to the far curbline on the south side of the street; between the western edge of the Lane Street driveway to the gardens behind the State Records Center, and Wilmington Street.

(2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998. (1973, c. 99, s. 1; 1975, c. 145, s. 3; 1981, c. 772, ss. 3, 4; 1991 (Reg. Sess., 1992), c. 1044, s. 7(a); 1993, c. 539, s. 913; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 18, ss. 8(c), 8.1; 1998-156, s. 1; 2003-284, s. 19B.2; 2006-264, s. 60.)

§ 120-32.1A. Evacuation of legislative buildings and grounds.

The Chief of the General Assembly Police, or the Chief's designee, shall exercise at all times those means that, in the opinion of the Chief, or the Chief's designee, may be effective in protecting the State legislative buildings and grounds and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Chief, or the Chief's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of the legislative buildings and grounds. (1997-112, s. 2.)

§ 120-32.2. General Assembly Special Police.

(a) All sworn members of the General Assembly Special Police employed by the Legislative Services Office are special police officers, and have all the powers of policemen of cities, within any of the following areas of jurisdiction, while on official duty:

(1) Within those areas of the City of Raleigh and of the unincorporated parts of Wake County surrounded by the innermost right-of-way of Interstate 440.

(2) In any part of the State:

a. While accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.

b. While preparing for, or providing security to, a session of either or both houses of the General Assembly, or official events directly related to that session.

c. While performing advance work and providing security for the protection of legislative members, staff, and the public for any meeting of a study, standing, select, or joint select committee, or any commission meeting of the General Assembly, or any state, regional, or national meetings of legislative bodies or organizations representing legislative bodies, and while accompanying a member of the General Assembly to or from any event listed in this subdivision.

(b) General Assembly Special Police officers may arrest persons outside the areas described in subsection (a) of this section when the person arrested has committed a criminal offense within any of the areas, for which the officer could have arrested the person within that area, and the arrest is made during such person's immediate and continuous flight from that area.

(c) The General Assembly Special Police officers have the exclusive authority and responsibility for enforcing the parking rules of the Legislative Services Commission. (1975, c. 145, s. 1; 1981, c. 772, s. 5; 1991 (Reg. Sess., 1992), c. 1044, s. 7(b); 2005-359, s. 1; 2008-145, s. 1.)

Effect of Amendments. — Session Laws 2008-145, s. 1, effective August 2, 2008, substituted "Special Police" for "special police" throughout the section; in subsection (a), substituted "special police officers" for "special policemen"; added subdivision (a)(2)c; and in subsection (c), substituted "Special Police officers have" for "special police has."

§ 120-32.3. Oath of General Assembly Special Police officers.

Before exercising the duties of a special police officer, each General Assembly Special Police officer shall take an oath before some officer empowered to administer oaths, and the oaths shall be filed with the Clerk of Superior Court of Wake County. The oath of office shall be as follows:

"State of North Carolina, Wake County.

"I, ____________, do solemnly swear (or affirm) that I will well and truly execute the duties of General Assembly Special Police officer in the State Legislative Building and other buildings and grounds subject to the jurisdiction of the Legislative Services Commission and in other areas designated by law, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all rules and regulations of the Legislative Services Commission concerning use of those buildings and grounds and all laws of the State of North Carolina. So help me, God.

"Sworn and subscribed to before me, this the ______ day of ____________, A.D. ________"

(1975, c. 145, s. 2; 1981, c. 772, s. 6; 2005-359, s. 2; 2008-145, s. 2.)

Effect of Amendments. — Session Laws 2008-145, s. 2, effective August 2, 2008, in the section catchline, substituted "Special Police officers" for "special police"; in the first paragraph, substituted "special police officer" for "special policeman" and "Special Police" for "special police"; and in the third paragraph, substituted "Special Police officer" for "special policeman."

§ 120-32.4. Subpoena and contempt powers.

The provisions of G.S. 120-19.1 through 120-19.4 shall apply to the proceedings of the Legislative Services Commission as if it were a joint committee of the General Assembly. (1977, c. 344, s. 5.)

§ 120-32.5. Leave for temporary employees.

Temporary part-time or full-time employees of the General Assembly who have four years of aggregate employment with the General Assembly (temporary or permanent) shall receive the same holidays, vacation leave, and sick leave as permanent part-time or full-time employees of the General Assembly respectively, or as may be determined by the Legislative Services Commission. (1983, c. 923, s. 217.)

§ 120-32.6. Certain employment authority.

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly. (2006-201, s. 3.)

Editor's Note. — Session Laws 2006-201, s. 25, made this section effective October 1, 2006, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed, on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 120-33. Duties of enrolling clerk.

(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words. The enrolled bill shall have the word "RATIFIED" following the bill number.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall present one true ratified copy:

(1) To the Governor of any act except acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and
(2) To the Secretary of State of:
  a. Acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and
  b. Joint resolutions.

In the case of any bill presented to the Governor, the enrolling clerk shall write upon the bill the time and date presented to the Governor.

(d1) The enrolling clerk shall present to the Secretary of State one true ratified copy of:

(1) Any bill which has become law with the approval of the Governor as provided by G.S. 120-29.1(a);

(2) Any bill which has become law without the approval of the Governor as provided by G.S. 120-29.1(b); and

(3) Any bill which has become law notwithstanding the objections of the Governor, as provided by G.S. 120-29.1(c).

(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than one on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the North Carolina Constitution shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution.

(e) Repealed by Session Laws 1995, c. 20, s. 1, effective January 1, 1997, contingent on approval of constitutional amendments.

(f) The enrolling clerk upon completion of duties after each session shall deposit the original bills and resolutions enrolled for ratification with the Secretary of State. (1969, c. 1184, s. 3; 1995, c. 20, s. 1; 1997-1, s. 1.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 409.

§ 120-34. Printing of session laws; numbering of session laws.

(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly and the executive orders of the Governor issued since the adjournment of the prior session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions and executive orders of the Governor on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing the ratified acts and resolutions, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the phrase “Session Law” or the letters “S.L.” followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections.

(b) All index references with respect to the session laws shall refer to the Chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers.

(c) There shall be printed not more than 2,500 volumes of the session laws and 600 volumes of the journals of each house of each session of the General Assembly, all of which shall be bound, and delivered to the Secretary of State for distribution by him under the provisions of G.S. 147-45, G.S. 147-46.1, G.S. 147-48 and other applicable statutes. (1969, c. 1184, s. 4; 1971, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 179; 1995, c. 20, s. 12; 1997-456, s. 45; 2001-513, s. 16(d).)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22, and Art. III, § 5, were approved.

§ 120-35. Payment for expenses.

Actual expenses for the joint operation of the General Assembly shall be paid by the State Treasurer upon authorization of the President pro tempore of the Senate and the Speaker of the House of Representatives. Expenses for the operation of the Senate shall be paid upon authorization of the President pro tempore of the Senate. Expenses for the operation of the House shall be paid upon authorization of the Speaker of the House. (1969, c. 1184, s. 5; 1971, c. 1200, s. 6.)

§ 120-36. Legislative Services Officer of the General Assembly.

(a) The Legislative Services Officer of the General Assembly shall be appointed by and serve at the pleasure of the Legislative Services Commission, and his compensation shall be fixed by the Legislative Services Commission.

(b) The Legislative Services Officer of the General Assembly shall perform such duties as are assigned to him by the Legislative Services Commission and shall be available to the Legislative Research Commission to provide such clerical, printing, drafting, and research duties as are necessary to the proper functions of the Legislative Research Commission. (1969, c. 1184, s. 6.)

ARTICLE 7A.

Fiscal Research Division.

§ 120-36.1. Fiscal Research Division of Legislative Services Commission established.

There is hereby established the Fiscal Research Division of the Legislative Services Commission, which shall be solely a staff agency of the General Assembly, shall be responsible to the General Assembly through the Commission, and shall be independent of all other officers, agencies, boards, commissions, divisions, and other instrumentalities of State government. The Division shall not be subject to the Executive Budget Act or the State Personnel Act. (1971, c. 659, s. 1.)

Editor's Note. — Session Laws 2009-451, s. 14.22, provides: "(a) The North Carolina Institute of Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., North Carolina Biotechnology Center, North Carolina Center for Automotive Research, Inc., Biofuels Center of North Carolina, High Point Market Authority, and Partnership for the Sounds, Inc., shall do the following:

"(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources.

"(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

"(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 120-36.2. Organization.

(a) The Legislative Services Commission shall appoint a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research shall assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees. (1971, c. 659, s. 1; 2006-259, s. 22.)

§ 120-36.3. Functions.

In addition to the functions prescribed in Article 7 of Chapter 120, the Legislative Services Commission, acting through the Fiscal Research Division, shall have the following powers and duties:

(1) To make periodic and special analyses of past receipts and expenditures and of current requests and recommendations for appropriations of State departments, agencies, and institutions, giving special consideration to the requests and recommendations for appropriations to continue current programs and services;

(2) To review and evaluate compliance by State departments, agencies, and institutions with such legislative directions as may be contained in the State budget;

(3) To examine the structure and organization of State departments, agencies, and institutions and recommend such changes as considerations of increased efficiency might indicate;

(4) To make such other studies, analyses, and inquiries into the affairs of State government as may be directed by the Legislative Services

Commission, by the Committee on Appropriations of either house, or by either house of the General Assembly.

(5) To make periodic reports on the activities of the Division and special reports on the above-mentioned studies, reviews, analyses, evaluations, examinations, and inquiries to the Committee on Appropriations of either house of the General Assembly, or to either house of the General Assembly, as may be appropriate. The reports of the Division shall, where feasible, include estimates of the financial savings achieved by or anticipated to result from its recommendations. (1971, c. 659, s. 1.)

Cross References. — As to participation by legislative fiscal research staff members in meetings and hearings of the Advisory Budget Commission, see G.S. 120-36.6.

§ 120-36.4: Repealed by Session Laws 1983 (Regular Session 1984), c. 1034, s. 176.

Cross References. — As to the furnishing of information by State departments, agencies, or institutions, see now G.S. 120-32.01.

§ 120-36.5. Office space and equipment.

The Fiscal Research Division shall be provided with suitable office space and equipment. (1971, c. 659, s. 1; 1981; c. 772, s. 7; c. 859, s. 13.3.)

§ 120-36.6. Legislative Fiscal Research staff participation.

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board or Council. (1971, c. 659, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 177.1; 1996, 2nd Ex. Sess., c. 18, s. 8(d); 2006-203, s. 60.)

Editor's Note. — This section was formerly G.S. 143-34.4. It was transferred to its present position by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 177.1(d).

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 60, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted the former first sentence, which read: "Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State."; and substituted "Board or Council" for "Board, Commission, or Council" three times.

§ 120-36.7. Long-term fiscal notes.

(a) Budget Outlook; Proposed Legislation. — Every fiscal analysis of the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis of the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect.

(b) Proposed State Buildings. — Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to appropriate funds for a State building. The analysis shall estimate the projected maintenance and operating costs of the building for the first 20 fiscal years after it is completed.

(c) Proposed New Programs. — Upon the request of a member of the General Assembly, the Fiscal Research Division shall prepare a fiscal analysis of proposed legislation to create a new State program. The analysis shall identify and estimate all personnel costs of the proposed new program for the first five fiscal years it will operate. The analysis shall also include a five-year estimate of space requirements, an indication of whether those requirements can be satisfied using existing State-owned facilities, and estimated costs of occupying leased space where State-owned space is not available.

(d) Proposed Increases in Incarceration. — Every bill and resolution introduced in the General Assembly proposing any change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall be prepared in consultation with the Sentencing Policy and Advisory Commission and shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed net increase in incarceration, including capital outlay costs if the legislation would require increased cell space. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

The sponsor of each bill or resolution to which this subsection applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could cause a net increase in the length of time for which persons are incarcerated or the number of persons incarcerated, whether by increasing penalties for violating existing laws, by criminalizing behavior, or by any other means, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section. (1991, c. 689, s. 340; 1993, c. 561, s. 21.)

Legal Periodicals. — For article, "The Effects of Depth and Distance in a Criminal Code on Charging, Sentencing, and Prosecutor Power," see 84 N.C. L. Rev. 1935 (2006).

ARTICLE 7B.

Research Division.

§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Research Division, in consultation with the Bill Drafting and Fiscal Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Research Division. Upon receipt of the request and the copy of the bill or resolution, the Research Division shall consult with the Bill Drafting and Fiscal Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Research Division and attach to the amended bill or resolution a certification as provided in this section. (1995, c. 415, s. 8; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2001-487, s. 79.)

Editor's Note. — Session Laws 2001-487, s. 79, transferred G.S. 120-36.8 to a new Article 7B of Chapter 120.

§§ 120-36.9, 120-36.10: Reserved for future codification purposes.

ARTICLE 7C.

Program Evaluation.

§ 120-36.11. Program Evaluation Division established.

(a) Division. — The Program Evaluation Division of the General Assembly is established. The purpose of the Division is to assist the General Assembly in fulfilling its responsibility to oversee government functions by providing an independent, objective source of information to be used in evaluating whether public services are delivered in an effective and efficient manner and in accordance with law.

(b) Director. — The Director of the Program Evaluation Division is appointed by the Legislative Services Commission and serves at the pleasure of the Commission. The Director is responsible for hiring and dismissing employees of the Division and directing the activities of the Division. The Director may not hire or dismiss an employee without the approval of the Legislative Services Officer. (2007-78, s. 3.)

Editor's Note. — Session Laws 2007-78, s. 4, made this Article effective June 14, 2007.

§ 120-36.12. Duties of Program Evaluation Division.

The Program Evaluation Division of the Legislative Services Commission has the following powers and duties:

(1) To examine a program or an activity of a State agency and evaluate the merits of the program or activity and the agency's effectiveness in conducting the program or activity.

(2) To develop quantitative indicators for measuring the activities performed and services provided by a State agency and the extent to which the activities and services are achieving desired results.

(3) To develop unit cost measures to determine the cost of activities performed and services provided by a State agency.

(4) To determine if a program or an activity of a State agency complies with the agency's mission, as established by law.

(5) To make unannounced visits to a State agency when needed to evaluate a program or an activity of the agency.

(6) To make recommendations to improve the efficiency and effectiveness of a State agency.

(7) To determine the extent to which a State agency has implemented any of the Division's recommendations concerning the agency.

(8) To require a State agency to submit a written response to a proposed or final recommendation of the Division and to submit a written explanation of the extent to which the agency has implemented the Division's recommendations.

(9) To make periodic reports of the activities and recommendations of the Division and of any savings achieved by the implementation of its recommendations.

(10) To receive reports alleging improper activities or matters of public concern listed in G.S. 126-84. The individual making the report may, at the individual's discretion, remain anonymous. Any report received under this subdivision, in whatever form, shall not be a "public record" as defined by G.S. 132-1 and becomes available to the public only as provided in G.S. 120-131. (2007-78, s. 3; 2008-196, s. 2(a).)

Effect of Amendments. — Session Laws 2008-196, s. 2(a), effective August 8, 2008, added subdivision (10).

§ 120-36.13. Work plan and requests for program evaluation.

(a) Plan. — The Joint Legislative Program Evaluation Oversight Committee, in consultation with the Director of the Program Evaluation Division, must establish an annual work plan for the Division. The Division must adhere to this annual plan, unless the Joint Legislative Program Evaluation Oversight Committee changes the annual plan to add a new evaluation or remove a planned evaluation. Any enacted legislation that directs the Program Evaluation Division to conduct a study or an evaluation is included in the annual work plan by operation of law.

The annual work plan constitutes an information request and a drafting request made by the Committee cochairs to legislative employees under Article 17 of Chapter 120 of the General Statutes. Any document prepared by a legislative employee pursuant to the annual work plan becomes available to the public only as provided in G.S. 120-131. Any document prepared by an agency employee pursuant to a request under G.S. 120-131.1(a1) becomes available to the public only as provided in G.S. 120-131.

(b) Request. — A request to the Program Evaluation Division for an evaluation of a program or an activity of a State agency must be submitted by a member of the General Assembly. The Director of the Division must review each request in accordance with the following criteria and make a recommendation to the Joint Legislative Program Evaluation Oversight Committee on whether to amend the Division's work plan to include the requested evaluation:

(1) The work required to conduct the requested evaluation.
(2) The effect that conducting the requested evaluation will have on the Division's ability to complete its work plan.
(3) The significance of the requested evaluation compared to the evaluations to be conducted under the work plan.
(4) Any overlap between the requested evaluation and other evaluations previously conducted by the Division or another agency. (2007-78, s. 3; 2008-196, s. 1(a).)

Editor's Note. — Session Laws 2008-196, s. 3, provides: "Section 1 of this act is effective June 14, 2007. The remainder of this act is effective when it becomes law, and violations of Section 1 of this act prior to the date this act becomes law may not be grounds for disciplinary action."

Effect of Amendments. — Session Laws 2008-196, s. 1(a), in subsection (a), inserted "annual" preceding "plan" twice in the second sentence, and added the third sentence in the first paragraph, and added the second paragraph. See Editor's note for applicability and effective date.

§ 120-36.14. Content of report of Program Evaluation Division.

A report of an evaluation of a program or an activity of a State agency by the Program Evaluation Division of the General Assembly must include the following:

(1) The findings of the Division concerning the program or activity.
(2) Specific recommendations for making the program or activity more efficient or effective.
(3) Any legislation needed to implement the Division's findings and recommendations concerning the program or activity.
(4) An estimate of the costs or savings expected from implementing the Division's findings and recommendations concerning the program or activity. (2007-78, s. 3.)

§ 120-36.15. Joint Legislative Program Evaluation Oversight Committee established.

(a) Membership. — The Joint Legislative Program Evaluation Oversight Committee is established. The Committee consists of 18 members as follows:

(1) Nine members of the Senate appointed by the President Pro Tempore of the Senate. At least two of the members must be a Cochair of the Senate Appropriations Committee or a subcommittee of the Senate Appropriations Committee. At least three of the members must be members of the minority party.
(2) Nine members of the House of Representatives appointed by the Speaker of the House of Representatives. At least two of the members must be a Cochair of the House Appropriations Committee or a subcommittee of the House Appropriations Committee. At least three of the members must be members of the minority party.

(b) Terms. — Terms on the Committee are for two years and begin on January 15 of each odd-numbered year. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly. Resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed.

(c) Chairs and Quorum. — The President Pro Tempore of the Senate and the Speaker of the House of Representatives must each designate a cochair of the Committee. The Committee meets upon the call of the cochairs. A quorum of the Committee is nine members. The Committee may not act except by a majority vote at a meeting at which a quorum is present.

(d) Standard Procedure. — In performing its duties, the Committee has the powers of a committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Funding for the Committee is provided by the Legislative Services Commission from appropriations made to the General Assembly. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer must assign professional and clerical staff to assist the Committee in its work. (2007-78, s. 3.)

Editor's Note. — Session Laws 2007-78, s. 4, provides: "This act is effective when it becomes law [June 14, 2007]. Notwithstanding G.S. 120-36.15, as enacted by Section 3 of this act, the terms of the initial members of the Joint Legislative Program Evaluation Oversight Committee begin on appointment and end on January 15, 2009."

§ 120-36.16. Duties of Joint Legislative Program Evaluation Oversight Committee.

The Joint Legislative Program Evaluation Oversight Committee has the following powers and duties:

(1) To receive and review requests for evaluations to be performed by the Program Evaluation Division of the General Assembly.
(2) To establish an annual work plan for the Program Evaluation Division that describes the evaluations to be performed by the Division. The Committee must consult with the Director of the Program Evaluation Division in performing this duty.
(3) To receive reports prepared by the Program Evaluation Division.
(4) To consult with an oversight committee or another committee established in this Chapter about a report concerning a program or an activity that is within that committee's scope of study.
(5) To recommend to the General Assembly any changes needed to implement a recommendation that is included in a report of the Program Evaluation Division and is endorsed by the Committee. (2007-78, s. 3; 2007-484, s. 31.)

Editor's Note. — This section was enacted as G.S. 120-36.15, by Session Laws 2007-78, s. 3. It was recodified as this section by Session Laws 2007-484, s. 31.

ARTICLE 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of three hundred eighty dollars ($380.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of one hundred four thousand eighty-four dollars ($104,084) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the

General Assembly to the Governor and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Office of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.7, 28.8; 1997-443, ss. 33.13, 33.14; 1998-153, ss. 10, 11; 1998-212, s. 28.7(a); 1999-237, ss. 28.7, 28.8; 2000-67, ss. 26.7, 26.8; 2001-424, ss. 32.8, 32.9; 2002-159, s. 35(f); 2004-124, ss. 31.8(b), 31.9(b); 2005-276, ss. 29.8, 29.9, 19B.1; 2005-345, s. 40; 2006-66, ss. 22.8, 22.9; 2006-203, s. 61; 2007-323, ss. 28.8, 28.9; 2008-107, ss. 26.8, 26.9.)

Editor's Note. — Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2006-203, s. 61, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "and Advisory Budget Commission" following "to the Governor" in the next-to-last sentence of subsection (c).

Session Laws 2008-107, ss. 26.8 and 26.9, effective July 1, 2008, substituted "three hundred eighty dollars ($380.00)" for "three hundred fifty-nine dollars ($359.00)" in subsection (b); and substituted "one hundred four thousand eighty-four dollars ($104,084)" for "one hundred one thousand two hundred ninety-eight dollars ($101,298)" in subsection (c).

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Subsistence Allowance. — Under this section as rewritten in 1969, the principal clerks, reading clerks and sergeants-at-arms of each House were entitled to the same daily subsistence allowance provided for members of the General Assembly by Session Laws 1969, c. 1257, from January 15, 1969 to the end of the session. See opinion of Attorney General to Mr. G. Andrew Jones, Jr., State Budget Officer, 40 N.C.A.G. 310 (1969).

§§ 120-38, 120-39: Repealed by Session Laws 1969, c. 1184, s. 7.

ARTICLE 9.

Lobbying.

§§ 120-40 through 120-47: Recodified as G.S. 120-47.1 to 120-47.10.

Editor's Note. — This Article was rewritten by Session Laws 1975, c. 820, s. 2, and has been recodified as Article 9A of this Chapter, G.S. 120-47.1 et seq.

ARTICLE 9A.

Legislative Branch Lobbying.

§§ 120-47.1 through 120-47.12: Repealed by Session Laws 2006-201, s. 17, effective January 1, 2007.

Cross References. — For current provisions regarding Lobbying, see Chapter 120C.

Editor's Note. — Session Laws 2006-201, ss. 23(a), (b), provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

G.S. 120-47.7B, as enacted by Session Laws 2005-456, and as amended by Session Laws 2006-201, s. 16, was effective from August 4, 2006, to January 1, 2007. As enacted the section read: "§ 120-47.7B. Powers and duties of the Secretary of State.

"(a) The Secretary of State shall perform systematic reviews of reports required to be filed under former G.S. 120-47.6 and G.S. 120-47.7 (repealed) on a regular basis to assure complete and timely disclosure of expenditures.

"(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Article. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Article. Subpoenas issued pursuant to this subsection shall be enforceable by the court through contempt powers.

"(c) Complaints of violations of this Article and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.".

Session Laws 2006-264, s. 99.4(a), effective January 1, 2007, amended G.S. 120-47.7B, by adding subsection (d), which read: "Any person, when in doubt about the applicability and interpretation of this article in a particular context, may submit in writing the facts of the situation to the Secretary of State with a request for a written opinion to establish the standard of duty regarding compliance with this Article. Any such opinion so issued shall specifically refer to this subsection. No person shall be subject to prosecution or civil action for failure to comply with this Article if the person has relied upon and complied with a written opinion issued by the Secretary of State under this subsection." Due to the repeal of Article 9A by Session Laws 2006-201, s. 17, effective January 1, 2007, the amendment has not been given effect, and the section is set out above as repealed.

ARTICLE 10.

Influencing Public Opinion or Legislation.

§§ 120-48 through 120-55: Repealed by Session Laws 1991, c. 740, s. 1.2.

Editor's Note. — Session Laws 1991, c. 740, s. 3 provides that the act shall be implemented within funds available to the Secretary of State, and that nothing in the act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of the act.

ARTICLE 11.

Legislative Intern Program.

§ 120-56. Legislative Intern Program Council created.

There is hereby created the Legislative Intern Program Council which shall consist of the President Pro Tempore of the Senate or the designee of that person, the Speaker of the House of Representatives or the designee of that person, and the chairman of the department of politics at North Carolina State University. Such Council shall establish a program for legislative interns for both houses of the General Assembly. (1969, c. 32; 1995, c. 490, s. 29.)

§ 120-57. Legislative Intern Program Council to promulgate a plan for the use of legislative interns.

(a) For purposes of this section the term "institutions of higher education" means four year colleges and universities and community colleges that offer college transfer programs.

(b) The Legislative Intern Program Council is hereby empowered and is directed to promulgate for each session of the General Assembly a plan providing for the selection, tenure, duties and compensation of legislative interns. Interns shall be selected from institutions of higher education within North Carolina, including but not limited to all units of the university system and community college system. The selection shall be based upon guidelines set forth by the Legislative Intern Program Council; these guidelines shall permit the proper consideration of each applicant. (1969, c. 32; 1979, c. 1067, s. 1; 2007-201, s. 1.)

ARTICLE 12.

Commission on Children with Special Needs.

§§ 120-58 through 120-70: Repealed by Session Laws 1999-395, s. 21B.1, effective July 1, 1999.

Editor's Note. — Sections 120-66 to 120-70 of Article 12, repealed by Session Laws 1999-395, s. 21B.1, had been reserved for future codification purposes.

Article 12A.

Joint Legislative Utility Review Committee.

§ 120-70.1. Committee established.

There is hereby established a permanent committee of the General Assembly to be known as the Joint Legislative Utility Review Committee, hereinafter called the Joint Committee, which shall exercise the powers and fulfill the duties described in this Article. (1985, c. 499, s. 1.)

Study — North Carolina Utilities Commission Regulation of Production and Distribution of Gasoline and Other Related Petroleum Products. — Session Laws 2006-206, ss. 4A.1, 4A.2, provide: "The General Assembly finds that the cost, availability, and distribution of gasoline and other related petroleum products have become as critical to the general public and the State's economy as electric power, natural gas, and other public utilities currently regulated by the North Carolina Utilities Commission. Accordingly, the Joint Legislative Utility Review Committee established under Article 12A of Chapter 120 of the General Statutes shall study the desirability and the feasibility of the North Carolina Utilities Commission regulating the production and distribution of gasoline and other related petroleum products as a public utility.

"No later than February 1, 2007, the Joint Legislative Utility Review Committee shall submit a report, including its findings and any recommendations or legislative proposals, to the 2007 General Assembly."

Editor's Note. — Session Laws 2007-383, s. 7(a), provides: "The Joint Legislative Utility Review Committee is directed to determine the best method for collecting the service charge imposed by G.S. 62A-43 from prepaid telephone wireless subscribers. The Committee is further directed to submit a final report of its findings and recommendations to the 2007 General Assembly, Regular Session 2008."

§ 120-70.2. Appointment of members and organization.

The Joint Committee shall consist of ten sitting members of the General Assembly. Five shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and five shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the appointing officer of the appropriate house. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of six members. (1985, c. 499, s. 1; 1991, c. 739, s. 1; 1995, c. 440, s. 1; c. 542, s. 20.5.)

§ 120-70.3. Powers and duties.

The Joint Committee shall have the following powers and duties:

(1) To evaluate the actions of the North Carolina Utilities Commission, including the review of its interim and final orders, to the end that the members of the General Assembly may better judge whether these actions serve the best interest of the citizens of North Carolina, individual and corporate.

(2) To analyze the operations of the several utility companies doing business in North Carolina, including review of their programs, projects, sources and amounts of income, performance and accomplishments, and determination of whether expenditures were in all cases appropriate and necessary.

(3) To inquire into the role of the North Carolina Utilities Commission, the Public Staff, and the several utility companies in the development of alternate sources of energy.

(4) To inquire into the individual and collective effort of the utility companies to encourage the conservation of energy and thus reduce requirements for additional generating facilities.

(5) To review and evaluate changes in federal law and regulation, or changes brought about by court actions, as well as changes in technology affecting utilities, to determine whether the State's laws require modification as a result of those changes.

(6) To submit evaluations to the General Assembly, from time to time, of the performance of the North Carolina Utilities Commission, the Public Staff, and the various utilities operating in the State. A proposed draft of such evaluations shall be submitted to the North Carolina Utilities Commission, the Public Staff and the affected public utilities prior to submission to the General Assembly and the affected entity shall be given an opportunity to be heard before the Joint Committee prior to the completion of the evaluation and its submission to the General Assembly.

(7) To make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties set out in this section.

(8) To undertake such additional studies or evaluations as may, from time to time, be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly. (1985, c. 499, s. 1; 1991, c. 739, s. 2.)

§ 120-70.4. Additional powers.

The Joint Committee, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and 120-19.1 through 120-19.4. The Joint Committee may meet at any time upon the call of either chairman, whether or not the General Assembly is in session. (1985, c. 499, s. 1.)

§ 120-70.5. Compensation and expenses of members.

Members of the Joint Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1985, c. 499, s. 1.)

§ 120-70.6. Joint Committee staffing.

The Joint Committee shall use clerical and professional employees of the General Assembly for its staff, who shall be made available to the Joint Committee by the Legislative Services Commission. The Joint Committee shall have the power to employ other professional staff, upon the determination of the necessity therefor by the Joint Committee; provided, however, that sufficient funds for such outside staff are available within the Joint Committee's budget. Travel and subsistence allowances for staff and employees of the Joint Committee shall be as fixed by G.S. 138-6 and G.S. 138-7 when such travel is approved by either chairman. Employees of the Joint Committee shall not be subject to the Executive Budget Act or to the State Personnel Act. Suitable office and meeting space, and appropriate equipment, shall be assigned to the Joint Committee by the Legislative Services Commission. (1985, c. 499, s. 1.)

Article 12B.

Commission on Children and Youth.

§§ 120-70.7 through 120-70.30: Repealed by Session Laws 1989, c. 802, s. 10.3.

Cross References. — As to Commission on the Family, see Article 12G of Chapter 120.

Editor's Note. — Sections 120-70.15 through 120-70.30 had been reserved for future codification in Article 12B, prior to its repeal by Session Laws 1989, c. 802, s. 10.3.

Article 12C.

Joint Select Committee on Low-Level Radioactive Waste.

§ 120-70.31. Committee established.

The Joint Select Committee on Low-Level Radioactive Waste is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Joint Select Committee" means the Joint Select Committee on Low-Level Radioactive Waste. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.32. Membership; cochairmen; vacancies; quorum.

The Joint Select Committee shall consist of six Senators appointed by the President Pro Tempore of the Senate and six Representatives appointed by the Speaker of the House of Representatives who shall serve at the pleasure of their appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Joint Select Committee shall be filled in the same manner as the original appointment. A quorum of the Joint Select Committee shall consist of seven members. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1991, c. 739, s. 3.)

§ 120-70.33. Powers and duties.

The Joint Select Committee shall have the following powers and duties:

(1) To study alternatives available to the State for dealing with low-level radioactive waste and the ramifications of each of those alternatives;

(2) Repealed by Session Laws 2001-474, s. 12, effective November 29, 2001.

(3) To evaluate actions of the Radiation Protection Commission, the radiation protection programs administered by the Division of Environmental Health of the Department of Environment and Natural Resources, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;

(4) Repealed by Session Laws 2001-474, s. 12, effective November 29, 2001.

(5) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting low-level radioactive waste management;

(6) To review existing and proposed State law and rules affecting low-level radioactive waste management and to determine whether any modification of law or rules is in the public interest;

(7) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(8) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, or the Joint Legislative Utility Review Committee, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1991, c. 342, s. 5; c. 739, s. 4; 1993, c. 501, s. 11; 1997-443, s. 11A.119(a); 2001-474, s. 12; 2002-70, s. 4.)

§ 120-70.34. Additional powers.

The Joint Select Committee, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Joint Select Committee may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Joint Select Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.35. Compensation and expenses of members.

Members of the Joint Select Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§ 120-70.36. Staffing.

The Legislative Services Officer shall assign as staff to the Joint Select Committee professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Joint Select Committee through the offices of the Directors of Legislative Assistants of the Senate and House of Representatives. The expenses of employment of clerical staff shall be borne by the Joint Select Committee. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1; 1996, 2nd Ex. Sess., c. 18, s. 8(e); 2007-495, s. 11.)

§ 120-70.37. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Select Committee created by this Part. (1987 (Reg. Sess., 1988), c. 1100, s. 3.1.)

§§ 120-70.38 through 120-70.40: Reserved for future codification purposes.

Article 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

Legislative Commission on Global Climate Change. — Session Laws 2005-442, ss. 1 to 12, as amended by Session Laws 2006-73, s. 1, as amended by Session Laws 2008-81, s. 1, and as amended by Session Laws 2009-306, s. 1, provides: "Commission Established; Membership. — The Legislative Commission on Global Climate Change is hereby established. The Commission shall consist of 34 members as follows:

"(1) Nine members appointed by the President Pro Tempore of the Senate.

"(2) Nine members appointed by the Speaker of the House of Representatives.

"(3) The President of Duke Power or the President's designee.

"(4) The President of Progress Energy or the President's designee.

"(5) The President of the North Carolina Citizens for Business and Industry or the President's designee.

"(6) The President of the Manufacturers and Chemical Industry Council of North Carolina or the President's designee.

"(7) The President of the North Carolina Farm Bureau Federation or the President's designee.

"(8) The President of the North Carolina Forestry Association or the President's designee.

"(9) The Southeast Regional Director of Environmental Defense or the Regional Director's designee.

"(10) The Executive Director of the Southern Alliance for Clean Energy or the Executive Director's designee.

"(11) The Executive Director of the North Carolina Coastal Federation or the Executive Director's designee.

"(12) The Executive Director of the North Carolina Conservation Council or the Executive Director's designee.

"(13) The Dean of the Nicholas School of the Environment and Earth Sciences, Duke University, or the Dean's designee.

"(14) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.

"(15) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.

"(16) The Director of the Carolina Environmental Program at the University of North Carolina at Chapel Hill or the Director's designee.

"(17) The Distinguished Research Professor (with expertise in sea level change), Department of Geology at East Carolina University.

"(18) The North Carolina State Climatologist.

"Cochairs. — The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

"Quorum. — A quorum of the Commission shall consist of 18 members.

"Vacancies. — Any vacancy on the Commission shall be filled by the original appointing authority.

"Purpose and Duties. — The Commission shall have the following purposes and duties:

"(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:

"a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.

"b. A review of actions taken by the federal government and by other states to address global warming.

"c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.

"d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.

"e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.

"f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

"(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

"(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

"(4) Based on its examination of global climate change, the Commission shall develop findings and recommendations, including any legislative proposals it determines to be appropriate, for consideration by the General Assembly.

"Additional Duties. — The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States. The Commission may also work cooperatively with other State agencies with respect to the agencies' areas of responsibilities regarding greenhouse gas emissions and climate change.

"Expenses of Members. — Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

"Consultants. — The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

"Meetings. — The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"Reports. — The Commission may submit interim reports at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the 2009 General Assembly and the Environmental Review Commission on or before October 1, 2010, at which time the Commission shall terminate.

"Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part."

Biofuels Industry Strategic Plan Work Group. — Session Laws 2006-206, ss. 3.1, 3.2, provide: "Section 3.1. There is established the Biofuels Industry Strategic Plan Work Group. The purpose of the Work Group is to develop a strategic plan for expansion of biofuels as an industry in North Carolina. The Work Group shall include representatives of the College of Agriculture and Life Sciences at North Carolina State University, the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University, the North Carolina Biotechnology Center, and the Rural Economic Development Center, Inc. In developing this strategic plan, the Work Group shall delineate the increasing role of biotechnology in the development of biofuels and may consult with all of the following:

"(1) The Department of Administration.

"(2) The Department of Agriculture and Consumer Services.

"(3) The Department of Commerce.

"(4) The Department of Environment and Natural Resources.

"(5) The Department of Transportation.

"(6) The University of North Carolina System.

"(7) The Community College System.

"(8) The North Carolina Solar Center at North Carolina State University.

"(9) The North Carolina Farm Bureau Federation.

"(10) The North Carolina State Grange.

"(11) The North Carolina Agribusiness Council.

"(12) The North Carolina Forestry Association.

"(13) Representatives of private industry that are engaged in biotechnology and the biofuels industry.

"(14) Any other entity that the Biofuels Industry Strategic Plan Work Group deems appropriate, particularly entities that are engaged in biotechnology and the biofuels industry."

"Section 3.2. The Biofuels Industry Strategic Plan Work Group shall submit an interim report on the development of the strategic plan, including any preliminary findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 15 January 2007. The Biofuels Industry Strategic Plan Work Group shall submit a final report on the development of the strategic plan, including any findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 1 April 2007."

§ 120-70.42. Membership; cochairs; vacancies; quorum.

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, the Chair or a Cochair of the Senate Committee on Appropriations — Natural and Economic Resources or the equivalent committee, and the Chair or a Cochair of the House of Representatives Committee on Appropriations — Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of nine members. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 727, s. 139; 1991, c. 739, s. 5; 1997-31, s. 1; 2002-176, s. 4; 2003-340, s. 4.)

§ 120-70.43. Powers and duties.

(a) The Environmental Review Commission shall have the following powers and duties:

(1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:
   a. Benefits of each program relative to costs;
   b. Achievement of program goals;
   c. Use of measures by which the success or failure of a program can be measured; and
   d. Conformity with legislative intent;

(2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
   a. Improvements in administrative structure, practices, and procedures;
   b. Increased integration and coordination of programs and functions;
   c. Increased efficiency in budgeting and use of resources;
   d. Efficient administration of licensing, permitting, and grant programs;
   e. Prompt, effective response to environmental emergencies;
   f. Opportunities for effective citizen participation; and
   g. Broadening of career opportunities for professional staff;

(3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agen-

cies and the recodification of statutes relating to the environment, including but not limited to:

a. Ways in which agencies may operate more efficiently and economically;

b. Ways in which agencies can provide better services to the State and to the people; and

c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;

(4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;

(5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;

(6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.

(b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

(1) Monitoring the implementation of Session Laws 1989, c. 727;

(2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;

(3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and

(4) Recodification of the General Statutes relating to the environment and environmental agencies.

(c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

(1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;

(2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;

(3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;

(4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;

(5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;

(6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;

(7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;

(8), (9) Repealed by Session Laws 2001-474, s. 12, effective November 29, 2001.

(10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;

(11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and

(12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 168, s. 46(b); c. 727, s. 225(a); 1991, c. 739, s. 6; 1991 (Reg. Sess., 1992), c. 990, s. 4; 1997-443, s. 11A.119(a); 2001-474, s. 12.)

Editor's Note. — Session Laws 2007-550, s. 18, provides: "The Environmental Review Commission shall study issues related to the franchise of solid waste management facilities by units of local government. The Environmental Review Commission, with the assistance of the Department of Justice, shall study issues related to the transportation of solid waste by rail or barge, including the extent to which regulation of the transportation of solid waste by rail or barge by state governments may be preempted by federal law. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2008 Regular Session of the General Assembly."

Session Laws 2008-137, ss. 1-4, provide: "Section 1. The Environmental Review Commission ("Commission") shall study the impacts on the State of the potential issuance of a new fifty-year license by the Federal Energy Regulatory Commission ("FERC") to Alcoa Power Generating, Inc., ("APGI") in the FERC relicensing proceeding known as FERC Project No. P-2197. The Commission is authorized to consider and develop proposals regarding all of the following issues:

"(1) The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.

"(2) Assurance of an adequate, clean future water supply for the region.

"(3) The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

"Section 2. The Commission shall submit a report to the 2009 General Assembly no later than February 1, 2009. This report shall include findings and any recommendations, including legislative proposals that would assist in implementing the recommendations.

"Section 3. Nothing in this act shall preclude the Governor or any State agency or department from taking any action necessary to protect the interest of the State in the FERC relicensing procedure known as FERC Project No. P-2197.

"Section 4. The Department of Environment and Natural Resources ("DENR") shall, to the extent allowed by State and federal statutes and rules, and without delaying its decision, consider the report submitted by the Commission under Section 2 of this act in making any decision on an application for water quality certification requested by APGI in connection with FERC relicensing of Project No. P-2197. The report submitted by the Commission under Section 2 of this act shall be included in the information necessary to trigger the 60-day time limit for the Director's decision pursuant to 15A NCAC 02H.0507(a) and shall be promptly supplied to the Director of the Division of Water Quality in DENR upon receipt by the General Assembly. Failure by the Commission to issue a report by the date specified in Section 2 will not prohibit DENR from making a final determination on such certification, nor is it the intent of the General Assembly to delay the processing by DENR of any such certification. Nothing in this act shall affect the authority of DENR to provide notices, request additional studies or information, conduct hearings, or issue or deny a 401 Water Quality Certification for FERC relicensing Project No. P-2197."

§ 120-70.44. Additional powers.

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1989, c. 784, s. 5; 2006-255, s. 3.1.)

Effect of Amendments. — Session Laws 2006-255, s. 3.1, effective August 23, 2006, added the subsection (a) and (b) designations to the previously undesignated paragraphs; and added subsection (c).

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Directors of the Legislative Assistants of the Senate and House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1; 1996, 2nd Ex. Sess., c. 18, s. 8(f); 2007-495, s. 12.)

Effect of Amendments. — Session Laws 2007-495, s. 12, effective August 30, 2007, substituted "Directors of Legislative Assistants of the Senate and House of Representatives" for "Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives" in the next-to-last sentence.

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission. (1987 (Reg. Sess., 1988), c. 1100, s. 4.1.)

§§ 120-70.48, 120-70.49: Reserved for future codification purposes.

ARTICLE 12E.

Joint Legislative Transportation Oversight Committee.

§ 120-70.50. Creation and membership of Joint Legislative Transportation Oversight Committee.

The Joint Legislative Transportation Oversight Committee is established. The Committee consists of 18 members as follows:

(1) Nine members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Nine members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1989, c. 692, s. 1.2; 1993, c. 321, s. 169.2(a); 2001-486, s. 2.4.)

Cross References. — As to periodic adjustment of permit fees to assure that revenue generated by the fees equals the cost of administration of Oversize/Overweight Permit Unit Program, see G.S. 20-119(e).

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: 'This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, ss. 27.6(a) to (*l*), as amended by Session Laws 2002-126, ss. 26.2(a) to (c), provides: "(a) Study Committee Established. — There is established a Highway Trust Fund Study Committee to report to the Joint Legislative Transportation Oversight Committee.

"(b) Membership. — The Study Committee shall be composed of 18 members as follows:

"(1) The Chairs of the Joint Legislative Transportation Oversight Committee.

"(2) Four Representatives and four public members appointed by the Speaker of the House of Representatives.

"(3) Four Senators and four public members appointed by the President Pro Tempore of the Senate.

"The appointing authorities shall make their appointments to reflect the urban-rural diversity of the population of the State.

"(c) Duties of the Study Committee. — The Committee may study all aspects of the Highway Trust Fund. The study shall include the examination of all the following:

"(1) The current status, cost estimates, and feasibility of Highway Trust Fund projects currently listed in Article 14 of Chapter 136 of the General Statutes.

"(2) Unanticipated problems with the structure of the Highway Trust Fund.

"(3) The gap between transportation funding structures and the actual transportation needs of the State.

"(4) Allocation issues raised by the structure of the transportation funding equity distribution formula in G.S. 136-17.2A.

"(5) The feasibility of altering the project eligibility requirements of the Highway Trust Fund, including permitting the Department of Transportation to add projects as long as adding those projects does not delay projects already to be funded by the Highway Trust Fund, projects scheduled under the 2002-2008 Transportation Improvement Program, and does not impair the cash-flow provisions of G.S. 136-176(a1).

"(6) The feasibility of altering the funding allocation structure of the Highway Trust Fund, including the possible use of the Highway Trust Fund to provide the State match for available federal aid highway funds as long as using the funds in this manner does not delay projects already funded by the Highway Trust Fund, projects scheduled under the 2002-2008 Transportation Improvement Program, and does not impair the cash-flow provisions of G.S. 136-176(a1).

"(7) Any other issue related to the Highway Trust Fund or transportation funding.

"(d) Vacancies. — The appointing authority shall fill any vacancy on the Study Committee.

"(e) Cochairs. — Cochairs of the Study Committee shall be the cochairs of the Joint Legislative Transportation Oversight Committee. The Study Committee shall meet upon the call of the Chairs. A quorum of the Study Committee shall be eight members.

"(f) Expenses of Members. — Members of the Study Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"(g) Staff. — The Legislative Services Office shall assign professional and clerical staff to the assist the Study Committee in its work.

"(h) Consultants. — The Study Committee may hire consultants to examine specific issues and subjects related to the study, in accordance with G.S. 120-32.02.

"(i) Meetings During Legislative Session. — The Study Committee may meet during a regular or extra session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

"(j) Meeting Location. — The Study Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Study Committee in the State Legislative Building or the Legislative Office Building.

"(k) Report. — The report of the study shall be made to the Joint Legislative Transportation Oversight Committee no later than the first day of the 2003 Session of the General Assembly. Upon the filing of its final report, the Study Committee shall terminate.

"(*l*) Funding. — The Study Committee shall be funded from funds available to the Joint Legislative Transportation Oversight Committee, in accordance with G.S. 120-70.52."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2007-527, s. 25, repealed Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), 590, s. 7, as amended by Session Laws 1999, c. 380, s. 3, which provided for the contingent repeal of this article.

Session Laws 2007-551, s. 2, provides: "The Department shall review the State Transportation Improvement Program (STIP) project planning, development, and prioritization process to determine any needed legislation to address congestion, mobility, and transportation infrastructure needs to meet established transportation network performance targets, and shall study alternative funding sources. The Department shall report its findings and recommendations to the Joint Legislative Transportation Oversight Committee by October 1, 2007."

Session Laws 2007-551, s. 3, provides: "The Office of State Budget and Management shall conduct a study to develop a statewide logistics plan to address long-term economic, mobility, and infrastructure needs. The study shall include, but not be limited to, all of the following:

"(1) Identification of priority commerce needs.

"(2) Transportation infrastructure, including multimodal solutions, to support key industries vital to the State's long-term economic growth.

"(3) Input from State agencies and the private sector.

"(4) A timetable for meeting any identified needs.

"The Office of State Budget and Management shall report its findings to the Joint Legislative Transportation Oversight Committee not later than April 1, 2008. Of the funds appropriated to the Department of Transportation from the Highway Fund, the Department may use up to one million dollars ($1,000,000) to pay for this study."

Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

§ 120-70.51. Purpose and powers of Committee.

(a) The Joint Legislative Transportation Oversight Committee may:

(1) Review reports prepared by the Department of Transportation or any other agency of State government related, in any manner, to transportation, when those reports are required by any law.

(2) Monitor the funds deposited in and expenditures from the North Carolina Highway Trust Fund, the Highway Fund, the General Fund, or any other fund when those expenditures are related, in any manner, to transportation.

(3) Determine whether funds related, in any manner, to transportation are being spent in accordance with law.

(4) Determine whether any revisions are needed in the funding for a program for which funds in the Trust Fund, the Highway Fund, the General Fund, or any other fund when those expenditures are related, in any manner, to transportation may be used, including revisions needed to meet any statutory timetable or program.

(5) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the funding or operation of programs related, in any manner, to transportation.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum oversight by the Committee of all transportation matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (1989, c. 692, s. 1.2; 1993, c. 321, s. 169.2(b).)

§ 120-70.52. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Transportation Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4.

(c) The Committee shall be funded by appropriations made to the Highway Trust Fund and allocated to the Intrastate System projects. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services

Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1989, c. 692, s. 1.2; 1993, c. 321, s. 169.2(c); 1996, 2nd Ex. Sess., c. 18, s. 8(g).)

§§ 120-70.53 through 120-70.59: Reserved for future codification purposes.

ARTICLE 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.60. Commission established.

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Commission" means the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1; 2002-165, s. 1.3.)

Editor's Note. — Session Laws 2007-485, s. 6, provides: "The Division of Emergency Management of the Department of Crime Control and Public Safety shall study ways to facilitate the construction and repair of water dependent structures such as fish processing and packing facilities and boat repair and building facilities located in regulated flood zones. The Division shall report the results of its study, including any recommendations, to the Joint Legislative Commission on Seafood and Aquaculture by March 1, 2008."

§ 120-70.61. Membership; cochairs; vacancies; quorum.

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this section, a legislative member of the Commission shall serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A legislative member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs on the Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Commission shall consist of eight members. (1989, c. 802, s. 12.1; 1991, c. 689, s. 184.1; 2005-386, s. 6; 2009-484, s. 9.)

Effect of Amendments. — Session Laws 2009-484, s. 9, effective August 26, 2009, in subsection (c), substituted "a legislative member of the Commission shall continue to serve" for "a member of the Commission shall serve" in the first sentence; and substituted "A legislative member" for "A member" at the beginning of the third sentence.

§ 120-70.62. Powers and duties.

The Commission shall have the following powers and duties:

(1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;

(2) To study the potential for increasing the role of aquaculture in all regions of the State;

(3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;

(4) To evaluate actions of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

(5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:

a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and

b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;

(6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;

(7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;

(8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1989, c. 802, s. 12.1; 1997-443, s. 11A.119(a); 2005-386, s. 1.8.)

§ 120-70.63. Additional powers.

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. (1989, c. 802, s. 12.1; 2005-386, s. 1.9; 2006-255, s. 3.2.)

§ 120-70.64. Compensation and expenses of members.

Members of the Commission shall receive per diem and travel allowances in accordance with G.S. 120-3.1 for members who are legislators, and shall receive compensation and per diem and travel allowances in accordance with G.S. 138-5 for members who are not legislators. (1989, c. 802, s. 12.1.)

§ 120-70.65. Staffing.

The Legislative Services Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the offices of the Directors of Legislative Assistants of the Senate and House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission. (1989, c. 802, s. 12.1; 1996, 2nd Ex. Sess., c. 18, s. 8(h); 2007-495, s. 13.)

§ 120-70.66. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1.)

§§ 120-70.67 through 120-70.69: Reserved for future codification purposes.

Article 12G.

Commission on the Family.

§§ 120-70.70 through 120-70.75: Repealed by Session Laws 1997-443, s. 12.15, effective August 28, 1997.

§§ 120-70.76 through 120-70.79: Reserved for future codification purposes.

Article 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.

The Joint Legislative Education Oversight Committee is established. The Committee consists of 22 members as follows:

(1) Eleven members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eleven members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1989 (Reg. Sess., 1990), c. 1066, s. 115; 1997-456, s. 46(a); 1997-495, s. 91(a); 1999-431, s. 3.7(a); 2001-486, s. 2.5.)

Dropout Prevention Grants. — Session Laws 2007-323, s. 7.32(a)-(f), as amended by Session Laws 2008-107, s. 7.14(a), as amended by Session Laws 2008-107, s. 7.14A, and by Session Laws 2008-181, s. 35.1, provides: "(a) Findings. — The General Assembly finds that:

"(1) North Carolina's schools recorded 22,180 dropout events in grades 9-12 for 2005-2006, a nine and nine-tenths percent (9.9%) increase from the count reported in 2004-2005. It is the highest count of dropouts since 1999-2000.

"(2) A disproportionate share of the increase in dropout rates occurred in large local school administrative units.

"(3) Black males accounted for a disproportionate amount of the increase in dropout count, and the dropout rate for black males increased to seven and one-hundredths percent (7.01%), an eight and four-tenths percent (8.4%) increase over the 2004-2005 rate.

"(4) Students drop out of school for a variety of reasons, including academic issues, family and other personal reasons, discipline issues, drug abuse, the need to work, school size, and school climate.

"(5) Students who drop out of school without graduating are more likely to be unemployed, receive public assistance, and have a higher incarceration rate than those who graduate.

"(6) In order for our citizens and State to thrive in a global, knowledge-based economy, it is imperative that more of our students graduate from high school with the knowledge and skills needed for postsecondary education or high-skilled employment.

"(7) Differing local needs and local resources necessitate the development of locally generated programs and initiatives that target dropouts and high school retention.

"(b) Purpose. — Recognizing that having an unacceptable dropout rate is not a new development in North Carolina, or in the rest of the country, and that over the years there have been, and continue to be, many programs and initiatives that have strived to address this issue, the purpose of this section is to focus attention and resources on innovative programs and initiatives that succeed in keeping students in school when other conflicting factors are pushing them to drop out before they are prepared to further their postsecondary education or enter the workforce.

"(c) Committee. — There is established the Committee on Dropout Prevention. The Committee shall be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee and shall provide staff to the Committee.

"The Committee shall determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under subsection (d) of this section, the amount of each grant, and eligible uses of the grant funding. The Committee shall consist of the following 15 members:

"(1) The Governor shall appoint five members, of whom one is a superintendent of schools, one is a representative of a nonprofit, and one is a school social worker;

"(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint five members, of whom one is a principal, one is a representative of a school of education, and one is a school counselor; and

"(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint five members, of whom one is a teacher, one is a member of the business community, and one is a representative of the juvenile justice system.

"The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest.

"(d) Dropout Prevention Grants. — The following criteria apply to dropout prevention grants approved by the Committee established under subsection (c) of this section.

"(1) Grants shall be issued in varying amounts up to a maximum of one hundred fifty thousand dollars ($150,000).

"(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and

(ii) serve as effective models for other programs.

"(3) Priority shall be given to new programs and initiatives or to those that have begun within the last five school years.

"(4) Grants shall be distributed geographically throughout the State.

"(5) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.

"(6) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

"(7) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

"(8) Programs and initiatives that receive grants under this subsection shall be based on best practices for preventing students from dropping out of school or for increasing the high school completion rate for those students who already have dropped out of school.

"(9) Priority for grants shall be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.

"(10) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

"(12) Grants shall be made no later than November 1, 2007.

"(e) Report. — The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate on December 31, 2010.

"(f) Joint Legislative Commission on Dropout Prevention and High School Graduation. —

"(1) There is created the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission) to be composed of 16 members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. The President Pro Tempore and the Speaker shall each designate a cochair from their appointees. Vacancies shall be filled in the same manner as the original appointments were made.

"(2) The cochairs shall jointly call the first meeting of the Commission. A quorum of the Commission is a majority of its members.

"(3) The Commission shall:

"a. Evaluate initiatives and programs designed to reduce the dropout rate and increase the number of students who graduate from high school prepared to further their postsecondary education or enter the workforce.

"b. Review the research on factors related to students' success in school.

"c. Evaluate the grants awarded under subsection (d) of this section and recommend whether any of the programs and initiatives that received one of these grants has potential for success and should be expanded or replicated.

"d. Study the emergence of major middle school and high school reform efforts, including Learn and Earn Programs, the New Schools Initiative, and 21st Century Schools, and the impact they may have on the dropout rate.

"e. Examine strategies, programs, and support services that should be provided if the compulsory school attendance age is raised to enable students to graduate from high school and time lines for implementing those strategies, programs, and support services.

"f. Following a review of the courses required for graduation and the current system of awarding credit for those courses, determine whether changes should be made that better recognize the different learning rates and other needs of students.

"g. Determine which interventions and other strategies, such as accelerated learning, tutoring, mentoring, or small class sizes, when employed as a substitute to grade retention or as a subsequent measure to grade retention, are the most effective at enabling these students to remain in school and graduate.

"h. Study any other issue that the Commission considers relevant and appropriate.

"(4) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional and clerical staff to assist in the work of the Joint Legislative Commission on Dropout Prevention and High School Graduation. The expenses of employment of the clerical staff shall be borne by the Joint Legislative Commission on Dropout Prevention and High School Graduation.

"(5) The Commission may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission, through the Legislative Services Officer, shall grant to the Joint Legislative Commission on Dropout Prevention and High School Graduation adequate meeting space in the State Legislative Building or the Legislative Office Building.

"(6) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

"a. Members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;

"b. Members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6; and

"c. All other members, at the rate established in G.S. 138-5.

"(7) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"(8) The Commission shall submit an interim written report of its findings and recommendations on or before the convening of the 2009 Session of the General Assembly. The Commission may submit an interim report, including any recommendations and proposed legislation, to the Joint Legislative Education Oversight Committee and the General Assembly by May 1, 2010, and shall submit a final written report of its findings and recommendations on or before the convening of the 2011 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate."

Session Laws 2008-107, s. 7.14(b), as amended by Session Laws 2008-118, s. 1.3(c), provides: "Committee. — The Committee on Dropout Prevention, as created in Section 7.32 of S.L. 2007-323, is reestablished to determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under this section, the amount of each grant, and eligible uses of the grant funding. When utilizing outside grant reviewers and raters, the Committee is encouraged to utilize individuals who represent public schools, universities, and community-based organizations.

"The Committee shall continue to be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee. The Department of Public Instruction shall provide technical assistance to the grant recipients for the length of the grant.

"The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest. The Committee shall meet on the call of the cochairs provided that the Committee shall meet at least once every three months.

"In the event of a vacancy on the Committee, the appointing authorities are encouraged to provide representation on the Committee from each of the eight educational districts as defined in G.S. 115C-65."

Session Laws 2008-107, s. 7.14(c)-(e), provided selection criteria for Dropout Prevention Grant recipients, provided criteria for Dropout Prevention Grants, and provided for the evaluation and reporting of the impact Dropout Prevention Grants awarded under Session Laws 2007-323 and 2008-107 have on dropout prevention.

Session Laws 2008-107, s. 7.14(f), provides: "Dropout Prevention Network. — In addition to its other duties, the Joint Legislative Commission on Dropout Prevention and High School Graduation, established under Section 7.32 of S.L. 2007-323, shall study the development of an effective network for the purpose of sharing best practices among the grant recipients, the public schools, and other interested organizations. The Commission shall consider interactive Web sites, electronic information sharing, professional development opportunities, conferences, and other means that it believes would be effective. The Commission may consult with the Department of Public Instruction and the Committee on Dropout Prevention. The Commission shall report its findings and any recommendations to the 2009 General Assembly."

Session Laws 2008-107, s. 7.14(g), as amended by Session Laws 2008-118, s. 1.3(b), and s. 7.14 (i) and (j) provide for specific appropriations for the Committee on Dropout Prevention. Session Laws 2008-107, s. 7.14(h) and (k), effective June 30, 2008, makes the appropriations non-reverting and provides that they shall remain available until August 31, 2009.

Session Laws 2009-451, s. 7.13(a)-(g) as amended by Session Laws 2009-575, s. 3L, provides: "(a) Dropout Prevention Grants. — The Committee on Dropout Prevention, as reestablished in Section 7.14 of S.L. 2008-107, may use the funds appropriated in this act to provide grants to new recipients and to extend additional funding to organizations that received funding previously.

"(b) Criteria for Dropout Prevention Grants. — The following criteria apply to all types of dropout prevention grants approved by the Committee:

"(1) Grants shall be issued in varying amounts up to a maximum of one hundred seventy-five thousand dollars ($175,000).

"(2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.

"(3) Grants shall be distributed geographically throughout the State and throughout the eight educational districts as defined in G.S. 115C-65. No more than three grants shall be awarded in any one county under this section in a single fiscal year.

"(4) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations. Applications from nonprofits shall be subject to the additional fiscal accountability controls described in subsection (e) of this section.

"(5) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.

"(6) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.

"(7) Programs and initiatives that receive grants under this section shall be based on best practices for helping at-risk students achieve successful academic progress, preventing students from dropping out of school, or for increasing the high school completion rate for those students who already have dropped out of school.

"(8) Priority for grants shall be given to proposals that (i) demonstrate input from the local community and coordination with other available programs or resources and (ii) provide clear plans for sustaining the program in future years when State funding will no longer be provided.

"(9) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.

"(10) Priority for grants shall be given to programs that would serve students in local schools that have a four-year cohort graduation rate of less than sixty-five percent (65%). The Committee shall establish a grant rating cutoff score at such a level as to allow for consideration of all viable grants in this priority category. The Committee may require grantees to provide supplemental information in response to any prior reviewer comments.

"(11) Priority for grants shall be given to proposals demonstrating the potential for success.

"(12) The demonstrated need for a grant, level of collaboration, ability to increase attendance, persistence, academic success, ability to increase parental involvement, and graduation shall be given more weight than the quality of the written grant.

"(13) Grants shall be made no later than November 1, 2009.

"The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee on the grants awarded under this section by March 1, 2010.

"(c) Evaluation. — The Committee shall evaluate the impact of the dropout prevention grants awarded under this section. In evaluating the impact of the grants, the Committee shall consider:

"(1) How grant funds were used, including the services provided for teen pregnancy prevention and for pregnant and parenting teens;

"(2) The success of the program or initiative, as indicated by the evaluation process stated in its grant application;

"(3) The extent to which the program or initiative has improved students' attendance, test scores, persistence, and graduation rates;

"(4) How the program or initiative was coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community;

"(5) What, if any, other resources were used in conjunction with the grant funds;

"(6) The sustainability of the program;

"(7) The number, gender, ethnicity, and grade level of students being served as well as whether the students left school due to pregnancy or parenting responsibilities;

"(8) The potential for the program to serve as a model for achieving successful academic progress for at-risk students; and

"(9) Other indicators of the impact of the grant on dropout prevention.

"The recipients of the dropout prevention grants awarded under this section shall report to the Committee on Dropout Prevention by January 31, 2011, and by September 30, 2011. The reports shall provide information to assist the Committee in conducting its evaluation. The reports shall include a statement that the recipients used grant funds for the purposes appropriated by the General Assembly and complied with applicable laws, regulations, and terms and conditions of the grant documents. The Committee shall make an interim report of the results of its evaluation of the grants awarded under this section by March 31, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee. The Committee shall make a final report of the results of its evaluation of the grants awarded under subsection (c) of this section by November 15, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee.

"(d) Program Modification. — The Committee shall develop a formal process for allowing grant recipients to modify their programs which includes, at a minimum, a formal review by the Committee prior to the allowance of any changes to the program that will result in activities not included in the grant application.

"(e) Additional Requirements for Nonprofit Organizations Receiving Dropout Prevention Grants. — As a condition for release of grant funds to a grantee, the Committee shall require each grantee to enter into a contract that requires the grantee to be (i) subject to monitoring by the Committee, (ii) fidelity bonded unless the grant is for less than one hundred thousand dollars ($100,000), (iii) subject to audit oversight by the State Auditor, and (iv) subject to the requirements of Article 6, Part 3 of Chapter 143C of the General Statutes.

"(f) Of the funds appropriated in this act for dropout prevention, the sum of:

"(1) One hundred thousand dollars ($100,000) for the 2009-2010 fiscal year and one hundred thousand dollars ($100,000) for the 2010-2011 fiscal year may be used to extend a current contract or to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation. The factors to be considered in awarding the contract shall be identified in the request for proposals;

"(2) Up to one hundred seventy-five thousand dollars ($175,000) for the 2009-2010 fiscal year and up to one hundred seventy-five thousand dollars ($175,000) for the 2010-2011 fiscal year may be used by the Department of Public Instruction for its administrative assistance to the Committee and to provide technical assistance under this section;

"(3) Three hundred thousand dollars ($300,000) in nonrecurring funds shall be used by the North Carolina Congress of Parents and Teachers, Incorporated, a nonprofit organization, to continue the North Carolina PTA Parent Involvement/Dropout Prevention Initiative; and

"(4) Fifty percent (50%) of the remainder shall be used by the Committee on Dropout Prevention to award grants to new recipients, and fifty percent (50%) shall be used to award successive grants to previous grant recipients. All grants shall be awarded in accordance with subsection (b) of this section.

"(g) Grant funds shall be expended by June 30 of the first full fiscal year following the issuance of the grants."

Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission. — Session Laws 2009-339 preamble and ss. 1 through 11, provide: "Whereas, the Innovative Education Initiatives Act became law in 2003; and

"Whereas, as a result of this act, 52 Early and Middle College programs have been developed as a collaboration between the public schools, the community colleges, and private business; and

"Whereas, these schools have generally evidenced a decrease in their dropout rates and, as a result, have won national awards; and

"Whereas, North Carolina has seven identified economic development regions, each with its own challenges in today's changing and demanding job market; and

"Whereas, North Carolina has numerous innovative public and private programs based in Science, Technology, Engineering, and Mathematics (STEM); and

"Whereas, to be efficient with the taxpayers' dollars, to continue to increase the graduation rate, and to prepare our students for twenty-first century jobs, it would be beneficial to map these innovative education programs, including the development of additional Early and Middle College programs and STEM programs, and other public and private education programs that have instructional programs that prepare students to meet the particular employment and workforce preparation needs of the respective economic development regions. In addition, it would be beneficial to develop curriculum frameworks that reflect innovative design principles in some of these schools that would address both regional and statewide employment needs; and

"Whereas, the United States Department of Education has identified 16 career clusters as a tool to connect career technical education (CTE) to education, workforce preparation, and economic development; and

"Whereas, the North Carolina STEM Community Collaborative/MCNC is supporting the creation of a replicable community visioning process, engaging business, policy, education, and community stakeholders in mapping their local needs and producing a plan for sustainable, local education innovation based in science, technology, engineering, and mathematics; and

"Whereas, it would be beneficial to position each region and the State to compete in the regional, national, and global economy by creating a joint legislative study commission to review the vision plans and overall needs of each economic development region as well as the overall needs of the State; and

"Whereas, the Commission should advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop standard instructional programs for twenty-first century career paths in accordance with the Early and Middle College and STEM models and study the implementation of pilot programs in these respective regions that will best suit the potential of the region and better prepare students for the increased academic demands of a global economy; Now, therefore,

"The General Assembly of North Carolina enacts:

"SECTION 1. There is established the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission (Commission).

"SECTION 2.(a) The Commission shall consist of the following members:

"(1) The Lieutenant Governor serving as the Chair.

"(2) Two members appointed by the Governor.

"(3) Eight members appointed by the President Pro Tempore of the Senate, to include:

"a. Three members of the Senate, with one designated to serve as a vice- chair.

"b. A representative of The University of North Carolina.

"c. A representative of the Department of Public Instruction.

"d. A representative of North Carolina's business and industry.

"e. A public school teacher.

"f. An individual with expertise in STEM education.

"(4) Eight members appointed by the Speaker of the House of Representatives, to include:

"a. Three members of the House of Representatives, with one designated to serve as a vice-chair.

"b. A representative of the Community College System.

"c. A representative of the Independent Colleges and Universities.

"d. A representative of the Department of Commerce.

"e. A representative of North Carolina's business and industry.

"f. A representative of North Carolina's school superintendents.

"(5) The Executive Director of the Education Cabinet or the Executive Director's designee, serving ex officio.

"SECTION 2.(b) Members of the Commission shall serve a three-year term, beginning on July 1, 2009. The terms for members of the House of Representatives or the Senate shall end upon the expiration of the members' legislative term.

"SECTION 2.(c) Members shall serve at the pleasure of the appointing authority. Vacancies on the Commission shall be filled by the same appointing authority who made the initial appointment.

"SECTION 2.(d) A vice-chair shall serve as Chair in the absence of the Chair.

"SECTION 3.(a) The Commission shall study issues related to economic development through innovative schools where instructional program frameworks reflect the high academic standards required of students to be successful as they transition to postsecondary education and future careers, including:

"(1) Technical and vocational needs of each economic development region;

"(2) Employment and workforce preparation needs of the State as a whole;

"(3) The economic vision plans for each economic development region;

"(4) The shortage of highly skilled employees such as technicians, teachers, allied health practitioners, including, but not limited to, nurses and doctors, scientists, and engineers;

"(5) The 16 career clusters identified by the United States Department of Education as well as additional career paths;

"(6) The development of a framework for assessment of readiness of a community or region to support twenty-first century economic demands of business and industry development and the scaling of innovative local programs to impact broader numbers of individuals in communities around the State; and

"(7) Any other matter pertinent to connecting career technical education to education, workforce preparation, and economic development through innovative schools.

"SECTION 3.(b) The Chair shall appoint from the Commission's membership a North Carolina STEM Community Collaborative Advisory Committee (Community Collaborative) to ensure that the efforts of the Commission and the Community Collaborative are aligned and that the Commission is informed of the Community Collaborative's activities and that the Community Collaborative is informed of the Commission's activities.

"SECTION 4. The Commission shall prioritize and customize the career clusters and identify additional career paths and report its recommendations to the State Board of Education. The Commission shall (i) advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop, incrementally, standard instructional programs for career clusters and their corresponding career paths in accordance with the Early and Middle College model, and (ii) study the implementation of pilot programs in the seven economic development regions of the State that will best suit the needs of the regions and prepare students for the increased academic demands of a global economy.

"SECTION 5. The Commission shall also study issues related to economic growth by the creation of measures and metrics which define the readiness of a community to deliver to all stakeholders the services that equip the workforce to be competitive in a STEM-intensive economy, including ensuring that students throughout the education pipeline gain the skills learned from science, technology, engineering, math, and other rigorous subjects. As a part of its study, the Commission may examine issues related to:

"(1) A replicable and perpetual model for aligning efforts of local business, industry, policy, and education stakeholders in community engagement for visioning student-centered learning;

"(2) The documentation and study of the innovative education programs critical for communities to be competitive in the STEM environment in the twenty-first century;

"(3) A framework to network these economic development regions, aligning State, regional, and external investment in replicable innovation;

"(4) Opportunities to leverage existing research, programs such as the College Foundation of North Carolina Bridges program, and other resources to maximize the impact of these existing resources and assets to avoid duplication, to achieve greater economies of scale, and to broaden the impact of these efforts by the most cost-effective means possible; and

"(5) Any other topics deemed relevant by the Commission.

"SECTION 6.(a) The Commission shall, within the first eight months of its creation, meet at least once in each economic development region. The Commission may use any and all appropriate technology to enhance participation in its meetings and to reduce the costs incurred by the Commission. The Chair may appoint a volunteer advisory committee in each economic development region to assist the Commission in its work.

"SECTION 6.(b) The Commission shall work closely with the business community across the State and shall encourage businesses and business leaders to partner with the Commission on the work of the Commission and to establish public-private partnerships with the pilot schools.

"SECTION 6.(c) The University of North Carolina shall inform the Commission on the work of its constituent institutions on the elementary and middle school fundamental building blocks for secondary STEM success. This work should be a consideration for all communities which engage in visioning student-centered learning. The Commission shall also be informed by The University of North Carolina on its North Carolina STEM program inventory and how to make this inventory available to communities which engage in visioning student-centered learning.

"SECTION 7. The Commission shall meet upon the call of the Chair. A quorum of the Commission shall be a majority of its members. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building. G.S. 120-19 applies to requests made on behalf of the Commission.

"SECTION 8.(a) The expenses of the Commission shall be paid by the Legislative Services Commission from available funds appropriated to the General Assembly. The Legislative Services Commission may accept grants on behalf of the State to be used to help defray the expenses of the Commission. Any application and receipt of grants under this section shall be subject to the requirements of Chapters 120C and 138A of the General Statutes, and Article 14 of Chapter 120 of the General Statutes. Reasonable expenses of the Commission may include the cost of travel on a learning tour of innovative schools both inside and out of the State. Any grants funds received under this section shall be held by the General Assembly in a non-reverting special fund known as the JOBS Commission Fund to be administered by the Legislative Services Commission for expenses of the Commission. Any funds remaining in the JOBS Commission Fund shall transfer to the reserves of the General Assembly upon termination of the Commission.

"SECTION 8.(b) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Individual expenses of five thousand dollars ($5,000) or less, including per diem, travel, and subsistence expenses of members of the Commission, shall be paid upon authorization of the Chair of the Commission. Individual expenses in excess of five thousand dollars ($5,000) shall be paid upon written approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

"SECTION 8.(c) With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist the Commission in its work during the interims between legislative sessions. The Directors of Legislative Assistants of the House of Representatives and the Senate shall assign clerical staff to the Commission. The Commission may contract for additional professional or consultant services in accordance with G.S. 120-32.02.

"SECTION 9.(a) The Commission shall make an initial report of the results of its study to the State Board of Education by March 1, 2010. In its report, the Commission shall recommend at least four of the 16 career clusters identified by the United States Department of Education that will best and most broadly serve the immediate employment and workforce preparation needs of the State and the respective regions. Upon consideration of the recommendations of the Commission, the State Board of Education, in consultation with the Department of Public Instruction, shall develop the instructional programs for at least four career clusters and shall implement at least one JOBS Early or Middle College in each of the economic development regions beginning with the 2010-2011 school year where feasible, and in all other regions by the 2011-2012 school year.

"SECTION 9.(b) The Commission may make recommendations resulting from its study to the State Board of Education and the Department of Public Instruction from time to time in its discretion.

"SECTION 9.(c) The Commission shall monitor the implementation of its recommendations to the State Board of Education and the

Department of Public Instruction and shall report and recommend to the General Assembly any legislation necessary to implement its recommendations.

"SECTION 9.(d) The Commission shall make an interim report of the results of its study and its recommendations, including any proposed legislation, to the Joint Legislative Education Oversight Committee and the 2010 Regular Session of the 2009 General Assembly no later than May 15, 2010, and to the Joint Legislative Education Oversight Committee and the 2011 Regular Session of the 2011 General Assembly no later than February 1, 2011, and a final report to the Joint Legislative Education Oversight Committee and the 2012 Regular Session of the 2011 General Assembly no later than May 15, 2012. The Commission shall file a copy of each Commission report with the President Pro Tempore of the Senate's office, the Speaker of the House of Representatives' office, and the Legislative Library.

"SECTION 10. The Commission shall terminate on June 30, 2012, or upon the filing of its final report in accordance with Section 9.(d) of this act.

"SECTION 11. This act is effective when it becomes law [July 24, 2009]."

Editor's Note. — Session Laws 2006-66, s. 8.3(c), provides: "The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-275, s. 1, provides: "The Joint Legislative Education Oversight Committee shall study strategies for recovering costs due to damaged and lost textbooks. In the course of the study, the Committee shall consider the scope of the problem and strategies for recouping the replacement costs. The Committee shall report the results of this study to the General Assembly by March 31, 2008."

Session Laws 2007-284, ss. 1 and 2, provide: "The General Assembly finds that additional data are needed to determine the adequacy with which the State's teacher education programs are preparing teachers to teach students with disabilities. The Board of Governors of The University of North Carolina, in consultation with the State Board of Education, shall study the effectiveness of the current teacher education programs in preparing new teachers to educate students with disabilities.

"The Board of Governors shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by May 15, 2008. The report shall include (i) evidence of the effectiveness of the current teacher education programs in preparing students to educate students with disabilities; (ii) documentation that the requirement for including specified demonstrated competencies in G.S. 115C-296(b) is being met; and (iii) identification of changes needed in teacher education programs to better prepare teachers to teach students with disabilities, and a timeline for the implementation of the changes."

Session Laws 2007-295, s. 1, provides: "The Department of Public Instruction shall identify the various models being utilized to deliver educational and other services at the high school level to children with disabilities in North Carolina. As a part of its study, the Department shall consider the efficacy of the models currently being used in the State and review the research for best practice models that are being implemented in other states. The Department shall report its findings and any recommended legislation or policy changes by March 1, 2008, to the Joint Legislative Education Oversight Committee."

Session Laws 2007-323, s. 8.1(c), provides: "The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 8.2(c), provides: "The Community Colleges System Office shall report by January 1, 2009, to the Joint Legislative Education Oversight Committee on the transition from the implementation phase to the ongoing operations and maintenance phase of the College Information System Project."

For similar prior provisions, see Session Laws 2007-323, s. 8.1(c).

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 9.7(b), provides: "The North Carolina Historically Minority Colleges and Universities Consortium shall report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by May 1 of each year regarding the number of programs funded by the Consortium to Close the Achievement Gap, the location and program structure of the programs, the amount allocated to the programs, and purposes for which the funds were awarded, the cost of administering and managing the funds, and any other information requested by the Committee or Fiscal Research Division. The grants awarded pursuant to this section also shall include as a term of the grant that the recipient of the grant report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division regarding the amount of the grant received, the program and purposes for which the grant was requested, the methodology used to implement the grant program and purposes, the results of the program funded by the grant, and any other information requested by the Joint Legislative Education Oversight Committee and the Fiscal Research Division."

Session Laws 2009-451, s. 9.24, created the Joint Legislative Committee on state funded student financial aid. The provisions are noted in full under G.S. 116-1.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 120-70.81. Purpose and powers of Committee.

(a) The Joint Legislative Education Oversight Committee shall examine, on a continuing basis, the several educational institutions in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve public education from kindergarten through higher education. In this examination, the Committee shall:

(1) Study the budgets, programs, and policies of the Department of Public Instruction, the State Board of Education, the Community Colleges System Office, the Board of Governors of The University of North Carolina, and the constituent institutions of The University of North Carolina to determine ways in which the General Assembly may encourage the improvement of all education provided to North Carolinians and may aid in the development of more integrated methods of institutional accountability;

(2) Examine, in particular, the Basic Education Plan and the School Improvement and Accountability Act of 1989, to determine whether changes need to be built into the plans, whether implementation schedules need to be restructured, and how to manage the ongoing development of the policies underlying these legislative plans, including a determination of whether there is a need for the legislature to develop ongoing funding patterns for these plans;

(3) Study other states' educational initiatives in public schools, community colleges, and public universities, in order to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and

(4) Study any other educational matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly.

A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (1989 (Reg. Sess., 1990), c. 1066, s. 115; 1999-84, s. 20.)

Cross References. — As to reports required from the Joint Legislative Education Oversight Committee to the General Assembly regarding capital facilities, see G.S. 116-13.1(a)(3).

UNC-NCCCS Joint Initiative for Teacher Education and Recruitment. — Session Laws 2005-276, s. 9.3, provides for the development and implementation of a Joint Initiative for Teacher Education and Recruitment. See note at G.S. 115C-295.

Editor's Note. — The School Improvement and Accountability Act of 1989, referred to in subdivision (a)(2), is Session Laws 1989, c. 788.

§ 120-70.82. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is 10 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1989 (Reg. Sess., 1990), c. 1066, s. 115; 1996, 2nd Ex. Sess., c. 18, s. 8(i); 1997-456, s. 46(b); 1997-495, s. 91(b).)

§ 120-70.83. Additional powers.

The Joint Legislative Education Oversight Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly. (1997-18, s. 15(b).)

§§ 120-70.84 through 120-70.89: Reserved for future codification purposes.

ARTICLE 12I.

Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives.

§§ 120-70.90 through 120-70.92: Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(g).

Editor's Note. — G.S. 120-70.92 was amended by Session Laws 1996, Second Extra Session, c. 18, s. 8(j), to substitute "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (c), effective July 1, 1996. Because of the repeal of this section, the amendment is not set out.

ARTICLE 12J.

Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

§ 120-70.93. Creation and membership of Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1995 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1994, Ex. Sess., c. 24, s. 49(a); 1997-443, s. 21.4(a); 2001-138, s. 2.)

Editor's Note. — Session Laws 1997-443, s. 21.14(f), provides that all reports directed by that act to be made to the Joint Legislative Corrections Oversight Committee shall be made to the Joint Legislative Corrections and Crime Control Oversight Committee [now the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee].

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Session Laws 2005-356, s. 2, provides: "The Administrative Office of the Courts, in consultation with the Department of Correction, Division of Community Corrections, shall study and review programs in this State, and other states, that utilize Global Positioning Satellite (GPS) technology to track criminal offenders. Based upon the study and review, the Administrative Office of the Courts shall make written recommendations to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than July 1, 2006, for a pilot GPS program as a condition for pretrial release pursuant to G.S. 15A-534.1. The recommendations shall include whether the alleged victim of the charged offense should have a receiver for immediate and direct notification of a GPS tracking violation by the defendant."

Session Laws 2006-32, s. 4, as amended by Session Laws 2006-187, s. 8, and as amended by Session Laws 2006-259, s. 44(a), provides: "The Legislative Research Commission shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

"(1) Funding mechanisms;

"(2) Target populations;

"(3) Interagency collaboration at the State and local levels; and

"(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

"The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

§ 120-70.94. Purpose and powers of Committee.

(a) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall examine, on a continuing basis, the correctional, law enforcement, and juvenile justice systems in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve those systems and to assist those systems in realizing their objectives of protecting the public and of punishing and rehabilitating offenders. In this examination, the Committee shall:

(1) Study the budget, programs, and policies of the Departments of Correction, Crime Control and Public Safety, and Juvenile Justice and Delinquency Prevention to determine ways in which the General Assembly may improve the effectiveness of those Departments;

(2) Examine the effectiveness of the Department of Correction in implementing the public policy stated in G.S. 148-26 of providing work assignments and employment for inmates as a means of reducing the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release;

(2a) Examine the effectiveness of the Department of Crime Control and Public Safety in implementing the duties and responsibilities charged to the Department in G.S. 143B-474 and the overall effectiveness and efficiency of law enforcement in the State;

(2b) Examine the effectiveness of the Department of Juvenile Justice and Delinquency Prevention in implementing the duties and responsibilities charged to the Department in Article 12 of Chapter 143B of the General Statutes and the overall effectiveness and efficiency of the juvenile justice system in the State; and

(3) Study any other matters that the Committee considers necessary.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (1994, Ex. Sess., c. 24, s. 49(a); 1997-443, s. 21.4(a); 2001-138, s. 1.)

§ 120-70.95. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1994, Ex. Sess., c. 24, s. 49(a); 1996, 2nd Ex. Sess., c. 18, s. 8(k); 1997-443, s. 21.4(a); 2001-138, s. 2.)

§§ 120-70.96 through 120-70.99: Reserved for future codification purposes.

Article 12K.

Joint Legislative Administrative Procedure Oversight Committee.

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1995, c. 507, s. 27.8(a).)

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

(1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.

(2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.

(3) Repealed by Session Laws 2009-125, s. 1, effective October 1, 2009.

(3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.

(4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.

(5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.

(6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.

(7) To review any other concerns about administrative law to determine if statutory changes are needed.

(8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 7.10(h); 2009-125, s. 1.)

Effect of Amendments. — Session Laws 2009-125, s. 1, effective October 1, 2009, deleted subdivision (3), relating to a notebook of administrative rules and added subdivision (3a).

§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 8(*l*).)

§ 120-70.103: Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

§ 120-70.104: Reserved for future codification purposes.

ARTICLE 12L.

Revenue Laws Study Committee.

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

(a) Membership. — The Revenue Laws Study Committee is established. The Committee consists of 20 members as follows:

(1) Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Ten members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. — Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1; 1998-98, s. 39; 2009-574, s. 51.1.)

Editor's Note. — Session Laws 2003-416, s. 2, effective August 14, 2003, reenacted Session Laws 2002-172.

Session Laws 2005-241, s. 8, provides: "The Economic Development Oversight Committee, created pursuant to Section 7 of this act, shall complete a comprehensive study of Article 3A of Chapter 105 of the General Statutes (the Bill Lee Act) and the Job Development Investment Grant Program (JDIG) established under Part 2G of Article 10 of Chapter 143B of the General Statutes. Before adopting a report on this issue, the Economic Development Oversight Committee must hold at least one joint meeting with the Revenue Laws Study Committee. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly, along with any recommendations or legislative proposals, before the beginning of the 2006 Regular Session of the 2005 General Assembly. The study shall focus on comprehensive reform of the Bill Lee Act, JDIG, and related economic development incentives. It is the intent of the General Assembly to replace the current Bill Lee Act beginning with the 2007 taxable year with a program recommended by the Committee and to revamp JDIG based on the Committee's recommendations."

Session Laws 2005-370, s. 3, provides: "As part of the study of the William S. Lee Act and the Job Development Investment Grant Program directed in Section 8 of S.L. 2005-241, the Economic Development Oversight Committee (Committee) shall study the use of reverse auctions for the procurement of professional services, including architectural, engineering, surveying and construction management at risk, or other construction services, by businesses that receive economic development incentives from the State or a local government. The Committee shall consider the advisability of making business incentives contingent upon a business's commitment not to use a reverse auction procurement process. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly before the beginning of the 2006 Regular Session of the 2005 General Assembly."

Effect of Amendments. — Session Laws 2009-574, s. 51.1, effective September 10, 2009, in subsection (a), substituted "20" for "16" in the introductory language and "Ten" for "Eight" at the beginning of subdivisions (1) and (2).

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.
(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

Editor's Note. — Session Laws 2006-151, s. 21, was codified as subsection (c) of this section, effective January 1, 2007, at the direction of the Revisor of Statutes.

Session Laws 2006-151, s. 20, is a severability clause.

Session Laws 2007-497, ss. 4.1 and 4.2, provide: "The General Assembly finds that increases to property tax values in this State resulting from real estate development often make it difficult for owners who do not want to develop their property to continue to use their property for farming or other nondevelopmental purposes. The Revenue Laws Study Committee may study ways to address the inability of landowners to pay escalating property taxes while maintaining nondevelopmental uses. The study may include a review of the following:

"(1) Implementing tax benefits for donating perpetual easements on property to ensure continuation of nondevelopmental uses.

"(2) Extending present-use value benefits to property that is used for wildlife conservation.

"(3) Other ways to reduce property taxes to preserve property used for farmland and other nondevelopmental uses.

"The Revenue Laws Study Committee may report its findings on the issues in this act, including any recommendations or legislative proposals, to the 2008 Regular Session of the General Assembly."

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

§ 120-70.108. Property Tax Subcommittee.

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of up to eight members. The Senate cochair of the Committee shall designate up to four members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The House cochair of the Committee shall designate up to four members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study the present-use value system, including the following:

(1) Examine the implementation and application of the current present-use value statutes.

(2) Evaluate other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, horticultural, and conservation use of land.

(3) Evaluate the treatment of undeveloped land in ad valorem tax.

(4) Evaluate the possibility of amending the present-use value system and developing other tax incentives to encourage conservation and environmental protection of land. The study shall include the feasibility of allowing lands managed for conservation and the preservation of water quality, wildlife habitats, and other conservation purposes to be taxed at their present-use value.

(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.

(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee. (2002-184, s. 8; 2004-170, s. 35.)

§ 120-70.109: Reserved for future codification purposes.

Article 12M.

Joint Legislative Health Care Oversight Committee.

§ 120-70.110. Creation and membership of Joint Legislative Health Care Oversight Committee.

There is established the Joint Legislative Health Care Oversight Committee. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-443, s. 22.1(b); 1998-1, s. 2(a).)

Editor's Note. — This section was enacted as G.S. 120-70.96 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.

§ 120-70.111. Purpose and powers of Committee.

(a) The Joint Legislative Health Care Oversight Committee shall review, on a continuing basis, the provision of health care and health care coverage to the citizens of this State, in order to make ongoing recommendations to the General Assembly on ways to improve health care for North Carolinians. To this end, the Committee shall study the delivery, availability, and cost of health care in North Carolina. The Committee shall also review, on a continuing basis, the implementation of the State Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. As part of its review, the Committee shall advise and consult with the Department of Health and Human Services as provided under G.S. 108A-70.21. The Committee shall review, on a continuing basis, the implementation of the North Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter 58 of the General Statutes. As part of its review, the Committee shall advise and consult with the Executive Director of the North Carolina Health Insurance Risk Pool as provided under G.S. 58-50-180. The Committee may also study other matters related to health care and health care coverage in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

(c) The Committee may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to review and monitor, on a continuing basis, the implementation of the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. The Committee shall have access to all records of the Department of Health and Human Services pertaining to the Health Insurance Program for Children and shall be kept apprised by the Department of communications between the Department and the Health Care Financing Administration with respect to development, submission, and approval of and amendments to the State Plan for the Health Insurance Program for Children. The Committee and its employees shall also be entitled to attend all meetings and have access to all records of the State Health Plan for Teachers and State Employes pertaining to the Health Insurance Program for Children that are not confidential in accordance with G.S. 135-37. G.S 135-37 shall be applicable to the Health Insurance Program for Children to the same extent that is applicable to teachers and State employees. (1997-443, s. 22.1(b); 1998-1, s. 2(c); 2007-323, s. 28.22A(o); 2007-345, s. 12; 2007-532, s. 1.5.)

Editor's Note. — G.S. 135-37, referred to in subsection (c), was recodified as G.S. 135-37.1 by Session Laws 2008-168, s. 1(d), effective July 1, 2008, and has been renumbered as G.S. 135-43 at the direction of the Revisor of Statutes.

This section was enacted as G.S. 120-70.97 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 28.22A(o), as amended by Session Laws 2007-345, s. 12, effective July 1, 2008, substituted "State Health Plan for Teachers and State Employees" for "North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan" in the third sentence of subsection (c).

§ 120-70.112. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Health Care Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is eight members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-443, s. 22.1(b).)

Editor's Note. — This section was enacted as G.S. 120-70.98 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.

§§ 120-70.113 through 120-70.119: Reserved for future codification purposes.

Article 12N.

Joint Legislative Growth Strategies Oversight Committee.

§§ 120-70.120 through 120-70.129: Expired.

Editor's Note. — Session Laws 2001-491, s. 3.3, as amended by Session Laws 2004-161, s. 3.2, and as amended by Session Laws 2006-248, s. 9.2, makes this Article effective January 15, 2002, and provides that it will expire January 16, 2007. Prior to its expiration on January 16, 2007, the Committee shall report to the General Assembly on its activities conducted pursuant to ss. 3.1 to 3.3 of Session Laws 2001-491.

G.S. 120-70.123 through 120-70.129 had been set out as reserved for future codification purposes.

ARTICLE 12O.

Joint Legislative Economic Development Oversight Committee.

§ 120-70.130. Creation and membership of Joint Legislative Economic Development Oversight Committee.

The Joint Legislative Economic Development Oversight Committee is established. The Committee consists of 12 members as follows:

(1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment. (2005-241, s. 7.)

Editor's Note. — Session Laws 2005-370, s. 3, provides: "As part of the study of the William S. Lee Act and the Job Development Investment Grant Program directed in Section 8 of S.L. 2005-241, the Economic Development Oversight Committee (Committee) shall study the use of reverse auctions for the procurement of professional services, including architectural, engineering, surveying and construction management at risk, or other construction services, by businesses that receive economic development incentives from the State or a local government. The Committee shall consider the advisability of making business incentives contingent upon a business's commitment not to use a reverse auction procurement process. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly before the beginning of the 2006 Regular Session of the 2005 General Assembly."

Session Laws 2005-241, s. 8, provides: "The Economic Development Oversight Committee, created pursuant to Section 7 of this act, shall complete a comprehensive study of Article 3A of Chapter 105 of the General Statutes (the Bill Lee Act) and the Job Development Investment Grant Program (JDIG) established under Part 2G of Article 10 of Chapter 143B of the General Statutes. Before adopting a report on this issue, the Economic Development Oversight Committee must hold at least one joint meeting with the Revenue Laws Study Committee. The Economic Development Oversight Committee shall complete the study and submit it to the General Assembly, along with any recommendations or legislative proposals, before the beginning of the 2006 Regular Session of the 2005 General Assembly. The study shall focus on comprehensive reform of the Bill Lee Act, JDIG, and related economic development incentives. It is the intent of the General Assembly to replace the current Bill Lee Act beginning with the 2007 taxable year with a program recommended by the Committee and to revamp JDIG based on the Committee's recommendations."

§ 120-70.131. Purpose and powers of Committee.

(a) The Joint Legislative Economic Development Oversight Committee shall examine, on a continuing basis, economic growth and development issues and strategies in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote cost-effective economic development initiatives. In this examination, the Committee may:

(1) Study the budgets, programs, and policies of the Department of Commerce, the North Carolina Partnership for Economic Develop-

ment, and other State, regional, and local entities involved in economic development.

(2) Analyze legislation from other states regarding economic development.

(3) Analyze proposals produced by the Economic Development Board.

(4) Study any other matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2005-241, s. 7.)

§ 120-70.132. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Economic Development Oversight Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2005-241, s. 7.)

Article 12P.

Joint Legislative Elections Oversight Committee.

§ 120-70.140. Creation and membership of Joint Legislative Elections Oversight Committee.

The Joint Legislative Elections Oversight Committee is established. The Committee consists of 18 members as follows:

(1) Nine members of the Senate appointed by the President Pro Tempore of the Senate. The President Pro Tempore shall appoint members proportionally according to the partisan composition of the Senate.

(2) Nine members of the House of Representatives appointed by the Speaker of the House of Representatives. The Speaker shall appoint members proportionally according to the partisan composition of the House.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment and end on January 15 of the next odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his or her successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2008-150, s. 1(a).)

Editor's Note. — Session Laws 2008-150, s. 1(c), made this Article effective August 2, 2008.

Session Laws 2008-150, s. 1(b), provides: "Expenses of the Joint Legislative Elections Oversight Committee shall be paid out of funds appropriated to the General Assembly, with the approval of the Legislative Services Officer."

§ 120-70.141. Purpose and powers of Committee.

(a) The Joint Legislative Elections Oversight Committee shall examine, on a continuing basis, election administration and campaign finance regulation in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve elections administration and campaign finance regulation. In this examination, the Committee shall do the following:

(1) Study the budgets, programs, and policies of the State Board of Elections and the county boards of elections to determine ways in which the General Assembly may improve election administration and campaign finance regulation.

(2) Examine election statutes and court decisions to determine any legislative changes that are needed to improve election administration and campaign finance regulation.

(3) Study other states' initiatives in election administration and campaign finance regulation to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and

(4) Study any other election matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2008-150, s. 1(a).)

Editor's Note. — Session Laws 2009-541, s. 31, provides: "The Joint Legislative Elections Oversight Committee shall study the following issues raised by the listed bills introduced in the 2009 Regular Session of the 2009 General Assembly and make recommendations regarding the standardization of that process to the 2010 Regular Session of the 2009 General Assembly on or before its convening:

"(1) Senate Bill 417, National Popular Vote Interstate Compact.

"(2) Senate Bill 596, Filling Vacancies in Local Offices.

"(3) Senate Bill 878, Judicial Appointment/Voter Retention."

§ 120-70.142. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Elections Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is 10 members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2008-150, s. 1(a).)

Editor's Note. — Session Laws 2008-150, s. 1(b), provides: "Expenses of the Joint Legislative Elections Oversight Committee shall be paid out of funds appropriated to the General Assembly, with the approval of the Legislative Services Officer."

§ 120-70.143. Additional powers.

The Joint Legislative Elections Oversight Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly. (2008-150, s. 1(a).)

ARTICLE 13.

Joint Legislative Commission on Governmental Operations.

§ 120-71. Purpose.

The rapid increase in the functions and costs of State government and the complexity of agency operations deeply concern the General Assembly. Members of the General Assembly have the ultimate responsibility for making public policy decisions and deciding on appropriations of public moneys. Knowledge of the public service needs being met, having evidence as to whether previous policy and appropriations have resulted in expected program benefits, and data on how State government reorganization has affected agency operations are most important.

Legislative examination and review of public policies, expenditures and reorganization implementation as an integral part of legislative duties and responsibilities should be strengthened. For the purpose of performing such continuing examination and evaluation of State agencies, [and] their actual effectiveness in programming and in carrying out procedures under reorganization, the General Assembly herein provides for the continuing review of operations of State government. (1975, c. 490.)

Cross References. — As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

Editor's Note. — Session Laws 1997-443, s. 21(b), provides that unless a state statute provides a different forum for review, when a federal law or regulation provides that an individual State application for a grant shall be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations.

Session Laws 2009-451, s. 14.22, provides: "(a) The North Carolina Institute of Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., North Carolina Biotechnology Center, North Carolina Center for Automotive Research, Inc., Biofuels Center of North Carolina, High Point Market Authority, and Partnership for the Sounds, Inc., shall do the following:

"(1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources.

"(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

"(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section."

Session Laws 2009-451, s. 19.6, provides: "The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2009-2011 biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 120-72. Definition.

For the purposes of this Article, "program evaluation" is defined as: an examination of the organization, programs, and administration of State government to ascertain whether such functions (i) are effective, (ii) continue to serve their intended purposes, (iii) are efficient, and (iv) require modification or elimination. (1975, c. 490.)

§ 120-73. Commission established.

There is hereby established the Joint Legislative Commission on Governmental Operations, hereinafter called the Commission, which shall conduct evaluative studies of the programs, policies, practices and procedures of the various departments, agencies, and institutions of State government. (1975, c. 490.)

Editor's Note. — Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001.'"

Session Laws 2001-424, s. 26.3(a), provides: "(a) Section 1303(4) of the Omnibus Crime Control and Safe Streets Act of 1968 provides that the State application for Drug Law Enforcement Grants is subject to review by the State legislature or its designated body. Therefore, the Governor's Crime Commission of the Department of Crime Control and Public Safety shall report on the State application for grants under the State and Local Law Enforcement Assistance Act of 1986, Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L.99-570, the Anti-Drug Abuse Act of 1986, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety when the General Assembly is in session. When the General Assembly is not in session, the Governor's Crime Commission shall report on the State application to the Joint Legislative Commission on Governmental Operations."

Session Laws 2001-424, s. 26.3(b), provides: "Unless a State statute provides a different forum for review, when a federal law or regulation provides that an individual State application for a grant shall be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2003-284, ss. 17.4(a) and (b) provide: "(a) Section 1303(4) of the Omnibus Crime Control and Safe Streets Act of 1968 provides that the State application for Drug Law Enforcement Grants is subject to review by the State legislature or its designated body. Therefore, the Governor's Crime Commission of the Department of Crime Control and Public Safety shall report on the State application for grants under the State and Local Law Enforcement Assistance Act of 1986, Part M of the Omnibus Crime Control and Safe Streets Act of 1968 as enacted by Subtitle K of P.L. 99-570, the Anti-Drug Abuse Act of 1986, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety when the General Assembly is in session. When the General Assembly is not in session, the Governor's Crime Commission shall report on the State application to the Joint Legislative Commission on Governmental Operations.

"(b) Unless a State statute provides a different forum for review, when a federal law or regulation provides that an individual State application for a grant shall be reviewed by the State legislature or its designated body and at the time of the review the General Assembly is not in session, that application shall be reviewed by the Joint Legislative Commission on Governmental Operations."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

§ 120-74. Appointment of members; terms of office.

The Commission shall consist of 38 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, the Deputy President pro tempore of the Senate, the Majority Leader of the House of Representatives, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint 16 members from the House. The President pro tempore of the Senate shall appoint 16 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. (1975, c. 490; 1977, c. 988, s. 1; 1979, c. 932, s. 9; 1981, c. 859, s. 85; 1985, c. 757, s. 142(a)-(c); 1991, c. 72, s. 1; 1995, c. 542, s. 24.1(a); 1997-495, s. 92; 1999-405, s. 1; 1999-431, s. 3.5(a); 2001-486, s. 2.6.)

Editor's Note. — Session Laws 1999-405, s. 1, provided that it amended this section if Senate Bill 437 became law. Senate Bill 437, enacted as Session Laws 1999-431, became law effective August 9, 1999.

§ 120-75. Organization of the Commission.

The President pro tempore of the Senate and the Speaker of the House of Representatives shall serve as cochairmen of the Commission. Either of the cochairmen may call a meeting of the Commission. (1975, c. 490; 1977, c. 988, s. 2; 1981, c. 859, s. 86; 1991, c. 72, s. 2.)

§ 120-76. Powers and duties of the Commission.

The Commission shall have the following powers:

(1) To conduct program evaluation studies of the various components of State agency activity as they relate to:
   a. Service benefits of each program relative to expenditures;

b. Achievement of program goals;
c. Use of indicators by which the success or failure of a program may be gauged; and
d. Conformity with legislative intent.

(2) To study legislation which would result in new programs with statewide implications for feasibility and need. These studies may be jointly conducted with the Fiscal Research Division of the Legislative Services Commission.

(3) To study on a continuing basis the implementation of State government reorganization with respect to:
a. Improvements in administrative structure, practices and procedures;
b. The relative effectiveness of centralization and decentralization of management decisions for agency operation;
c. Opportunities for effective citizen participation; and
d. Broadening of career opportunities for professional staff.

(4) To make such studies and reports of the operations and functions of State government as it deems appropriate or upon petition by resolution of either the Senate or the House of Representatives.

(5) To produce routine written reports of findings for general legislative and public distribution. Special attention shall be given to the presentation of findings to the appropriate committees of the Senate and the House of Representatives. If findings arrived at during a study have a potential impact on either the finance or appropriations deliberations, such findings shall immediately be presented to the committees. Such reports shall contain recommendations for appropriate executive action and when legislation is considered necessary to effect change, draft legislation for that purpose may be included. Such reports as are submitted shall include but not be limited to the following matters:
a. Ways in which the agencies may operate more economically and efficiently;
b. Ways in which agencies can provide better services to the State and to the people; and
c. Areas in which functions of State agencies are duplicative, overlapping, or failing to accomplish legislative objectives, or for any other reason should be redefined or redistributed.

(6) To devise a system, in cooperation with the Fiscal Research Division of the Legislative Services Commission, whereby all new programs authorized by the General Assembly incorporate an evaluation component. The results of such evaluations may be made to the Appropriations Committees at the beginning of each regular session.

(7) To evaluate and approve or deny requests from the Department of Transportation regarding the funding of federally eligible construction projects as provided in the fourth paragraph of G.S. 136-44.2.

(8) The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:
a. Repealed by Session Laws 2007-117, s. 2, effective July 1, 2007.
b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as provided by G.S. 143C-6-4.
c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.

d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.

e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures. (1975, c. 490; 1981, c. 859, s. 87; 1996, 2nd Ex. Sess., c. 18, s. 7.4(a); 1997-443, s. 7.8(e); 2005-276, s. 6.7(a); 2006-203, s. 62; 2007-117, s. 2.)

Cross References. — As to study and report on use of pseudoephedrine products to make methamphetamine, see G.S. 114-19.01.

§ 120-76.1. Prior consultation with the Commission.

(a) Notwithstanding the provisions of G.S. 120-76(8) or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this subsection no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(b) Any agency, board, commission, or other entity required under G.S. 120-76(8) or any other provision of law to consult with the Commission prior to taking an action shall submit a detailed report of the action under consideration to the Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly. If the Commission does not hold a meeting to hear the consultation within 90 days of receiving the submission of the detailed report, the consultation requirement is satisfied. With regard to capital improvement projects of The University of North Carolina, if the Commission does not hold a meeting to hear the consultation within 30 days of receiving the submission of the detailed report, the consultation requirement of G.S. 120-76(8)e. is satisfied.

(c) Consultations regarding the establishment of new fees and charges and the increase of existing fees and charges are governed by G.S. 12-3.1, and this section does not apply to those consultations. (1996, 2nd Ex. Sess., c. 18, s. 7.4(a); 2005-276, s. 6.7(a); 2007-322, s. 10.)

Cross References. — As to consultation requirement before beginning design or construction of any new welcome center or visitor center, see G.S. 136-18.01, and as G.S. 143B-421.3.

Editor's Note. — This section is the former last paragraph of subdivision (8) of G.S. 120-76, as recodified and rewritten by Session Laws 2005-276, s. 6.7(a). The appropriate portion of the historical citation to former G.S. 120-76 has been included in the historical citation for this section.

Session Laws 2007-322, s. 12, provides: "The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations by July 1, 2008, on the implementation of [this section].

§ 120-77. Additional powers.

The Commission, while in the discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Commission or secure any evidence under the provisions of G.S. 120-19. In addition, the provisions of G.S. 120-19.1 through 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. (1975, c. 490; 1977, c. 344, s. 1.)

§ 120-78. Compensation and expenses of Commission members.

Members of the Commission, who are also members of the General Assembly, shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 for General Assembly members. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. (1975, c. 490; 1977, c. 988, s. 3; 1991, c. 72, s. 3.)

§ 120-79. Commission staffing.

(a) The Commission shall use available secretarial employees of the General Assembly, or may employ, and may remove, such professional and clerical employees as the Commission deems proper. The chairmen may assign and direct the activities of the employees of the Commission, subject to the advice of the Commission.

(b) The employees of the Commission shall receive salaries that shall be fixed by the Legislative Services Commission and shall receive travel and subsistence allowances fixed by G.S. 138-6 and 138-7 when such travel is approved by either chairman, subject to the advice of the Commission. The employees of the Commission shall not be subject to the Executive Budget Act or to the State Personnel Act.

(c) The Commission may use employees of the Fiscal Research Division of the Legislative Services Commission.

(d) The Commission shall assure that sufficient funds are available within its appropriations before employing professional and clerical employees. (1975, c. 490; 1981, c. 859, ss. 88, 89.)

§§ 120-80 through 120-84: Reserved for future codification purposes.

Article 13A.

Joint Legislative Committee to Review Federal Block Grant Funds.

§§ 120-84.1 through 120-84.5: Repealed by Session Laws 1987, c. 738, s. 120(d).

Article 13B.

Joint Legislative Commission on Future Strategies for North Carolina.

§ 120-84.6. Purpose.

There is hereby established the Joint Legislative Commission on Future Strategies for North Carolina, hereinafter called the Commission, which shall review future trends and events to consider how they may affect North Carolina, and develop policy options for how State and local governments and the general public can be prepared to benefit from these future trends and events. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.7. Membership.

The Commission shall consist of six members of the House of Representatives appointed by the Speaker of the House of Representatives and six members of the Senate appointed by the President Pro Tempore of the Senate. Members shall serve for two-year terms beginning on the convening of the General Assembly in each odd-numbered year; provided, however, the terms of initial members shall begin on appointment and end on the day of the convening of the 1991 General Assembly. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission.

Vacancies created by resignation or otherwise shall be filled by the original appointing authority.

A House cochairman and a Senate cochairman shall be elected by the Commission from among its members. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.8. Powers and duties.

The Commission shall have the following powers and duties:

(1) To review reports which propose future strategies, goals, or recommendations for North Carolina, and determine the status of the proposed strategies, goals, and recommendations.

(2) To review governmental and nongovernmental research and studies relating to current and future trends and events, and to assess the impact of these future trends and events on future governmental policy.

(3) To review current statutes related to comprehensive planning at all levels of government and propose changes considered most consistent with state-of-the-art comprehensive growth management and development policies.

(4) To review the history and current status of intergovernmental relationships in North Carolina.

(5) To conduct periodic surveys to assess citizen attitudes toward current trends and determine their impact on strategic policy options.

(6) To undertake such additional studies, surveys, or evaluations as may, from time to time, be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either house of the General Assembly.

(7) To appoint advisory committees, which may include government officials and interested citizens, to examine specific issues as deter-

mined by the Commission. A Commission member shall be appointed chairman of such advisory committees.

(8) To conduct studies of long range fiscal impact of proposals or policies under review by the Commission.

(9) To develop rules regarding the selection, design, methodology, and execution of citizens attitude surveys, research and study topics for Commission approval and consideration.

(10) To issue reports, forecasts, and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties set out in this section. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.9. Reports to the General Assembly.

The reports shall contain findings, recommendations, and forecasts of potential future strategies and policy alternatives which may be beneficial to State and local governments and the general public of North Carolina. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.10. Additional powers.

The Commission shall have the following additional powers:

(1) While in the discharge of official duties, to have access to any paper or document, and to compel the attendance of any State official or employee before the Commission or secure any evidence under the provisions of G.S. 120-19. In addition, the provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly.

(2) To apply for and receive gifts and grants from private sources to assist the Commission in fulfilling its duties, subject to the approval of the Legislative Services Commission. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.11. Compensation and expenses of Commission members.

Members of the Commission shall serve without pay but shall receive per diem and subsistence in accordance with G.S. 138-5, 138-6, or 120-3.1, as appropriate. The facilities of the State Legislative Building and any other State office building used by the General Assembly, shall be available to the Commission for its use. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

§ 120-84.12. Commission staffing.

(a) The Commission may use available clerical employees of the General Assembly, with the approval of the Legislative Services Commission.

(b) The Commission may, with the consent of the Legislative Services Commission, use employees of the Fiscal Research, Legislative Automated Systems, General Research, Legislative Drafting, and Public Information Divisions of the Legislative Services Commission. (1989 (Reg. Sess., 1990), c. 1066, s. 23.)

ARTICLE 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-85: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-85.1. Definitions.

As used in this Article, the following terms mean:

(1) Business with which associated. — As defined in G.S. 138A-3.
(2) Confidential information. — As defined in G.S. 138A-3.
(3) Economic interest. — As defined in G.S. 138A-3.
(4) Immediate family. — As defined in G.S. 138A-3.
(5) Legislator. — As defined in G.S. 138A-3.
(6) Nonprofit corporation or organization with which associated. — As defined in G.S. 138A-3.
(7) Vested trust. — As defined in G.S. 138A-3. (2006-201, s. 5.)

Editor's Note. — Session Laws 2006-201, s. 25, makes this section effective January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

§ 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(d) Repealed by Session Laws 2006-201, s. 6, effective January 1, 2007.

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103.1. (1975, c. 564, s. 1; 1983, c. 780, s. 2; 1993, c. 539, s. 1302; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.27(a); 2006-201, s. 6.)

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-86.1. Personnel-related action unethical.

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in G.S. 120C-100(5), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes. (1997-520, s. 7; 2006-201, s. 20(a).)

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-87. Disclosure of confidential information.

(a) No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for: (i) the legislator; (ii) a business with which the legislator is associated; (iii) a nonprofit corporation or organization with which the legislator is associated; (iv) a member of the legislator's immediate family; or (v) any other person.

(b) Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007. (1975, c. 564, s. 1; 2004-199, s. 31(b); 2006-201, s. 4; 2007-347, s. 1; 2007-484, s. 16.)

Editor's Note. — Session Laws 2004-199, s. 31(f), made the amendments to this section by s. 31(b), effective January 1, 2006, and applicable to candidates running for office on or after that date, to persons appointed to fill vacancies for the 2007 and subsequent General Assemblies, and to presiding officers of the 2007 and subsequent General Assemblies.

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-88: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 2. Statement of Economic Interest.

§ 120-89: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-90: Repealed by Session Laws 2001-119, s. 2, effective May, 25, 2001.

§ 120-91: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1028, s. 3.

§§ 120-92 through 120-94: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

§ 120-95: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1028, s. 3.

§ 120-96: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

§ 120-97: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1028, s. 3.

§ 120-98: Repealed by Session Laws 2006-201, s. 4, effective January 1, 2007.

Part 3. Legislative Ethics Committee.

§ 120-99. Creation; composition.

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, and six members of the House of Representatives appointed by the Speaker of the House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007.

(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers. (1975, c. 564, s. 1; 1985, c. 790, s. 6; 1991, c. 739, s. 15; 1995, c. 180, s. 1; 2004-199, s. 31(d); 2006-201, ss. 7, 8; 2009-10, s. 1.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), as amended by Session Laws 2007-347, s. 16, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2009-10 s. 1, effective March 26, 2009, in subsection (a) substituted "and six members of the House of Representatives appointed by the Speaker of the House." for "among them — three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader, and six members of the House of Representatives appointed by the Speaker of the House, among them — three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader." and added the last three sentences; in subsection (b) at the end of the first sentence inserted "to serve as cochair for the current General Assembly, and until the cochair's successor is designated"; at the beginning of the third sentence substituted "A" for "However, a"; and added subsection (d).

§ 120-100. Term of office; vacancies.

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only. (1975, c. 564, s. 1; 1995, c. 180, s. 2; 2004-199, s. 31(e); 2009-10, s. 2.)

Editor's Note. — Session Laws 2009-10, s. 3, provides: "Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

"(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

"(2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years."

Effect of Amendments. — Session Laws 2009-10, s. 2, effective March 26, 2009, at the end of the fist sentence of subsection (a) deleted "and appointees shall serve until the expiration of their then-current terms as members of the General Assembly" and added the second sentence; in subsection (b) added the first sentence and at the end of the second sentence added "from a list of two nominees submitted by that party's leader"; in the first sentence of subsection (c) inserted "of two members" following "from a list by."

§ 120-101. Quorum; expenses of members.

(a) Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1; 1995, c. 180, s. 3; 2006-201, s. 9.)

Editor's Note. — Session Laws 2006-201, s. 23(a), (b), as amended by Session Laws 2007-347, s. 16, provides: "(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

"(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-102. Powers and duties of Committee.

(a) In addition to the other powers and duties specified in this Article, the Committee may:

(1) through (4) Repealed by Session Laws 2006-201, s. 10, effective January 1, 2007.

(5) Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, prepare advisory memoranda to legislators and legislative employees on specific ethical concerns, and suggest rules of conduct that shall be adhered to by legislators and legislative employees.

(5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.

(6a) Review, modify, or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.

(7) Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, investigate and dispose of the matter according to the terms of this Article.

(9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.

(10) Adopt procedures to implement this Article.

(11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties. (1975, c. 564, s. 1; 1979, c. 864, s. 3; 1991, c. 700, s. 1; 2006-201, s. 10; 2007-348, s. 1.)

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2009-549, s. 6, provides: "The Joint Legislative Ethics Committee and the State Ethics Commission shall jointly study the process for issuing, reviewing, and revising formal advisory opinions, and the process for publishing formal and informal advisory opinions, applicable to all persons covered under Chapters 120, 120C, and 138A of the General Statutes. The joint study shall review the redacted opinions of both the Legislative Ethics Committee and the State Ethics Commission, with a specific focus on all opinions related to indirect gifts. The Joint Legislative Ethics Committee and the State Ethics Commission may each make recommendations to the 2010 Regular Session of the 2009 General Assembly."

§ 120-103: Repealed by Session Laws 2006-201, s. 11, effective January 1, 2007.

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. — On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and of this Article.

(2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(a1) Complaints on Its Own Motion. — An investigation initiated by the Committee on its own motion instituted under subsection (a) of this section shall be treated as a complaint for purposes of this section and need not be sworn or verified. Any requirements under this section that require the Committee to notify the complainant shall not apply to complaints taken up by the Committee on its own motion. If the Committee is acting on a complaint referred to the Committee by the Commission where the Commission was acting on its own motion, the Committee shall be deemed to have satisfied the notice requirements by providing notice to the Commission. Any notice provided to the Commission under this section is confidential and shall not be disclosed by the Commission.

(b) Initial Consideration of a Complaint. — All of the following shall apply to the Committee's initial consideration of a complaint:

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

a. The complaint is frivolous or brought in bad faith.

b. The individuals and conduct complained of have already been the subject of a prior complaint.

c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.

(3) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.

(4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of Complaints. — The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of receiving a complaint or a referral of a complaint to the Committee, the Committee shall do at least one of the following:

(1) Dismiss the complaint.

(2) Initiate a preliminary investigation of the complaint.

(3) Refer the complaint for further investigation and a hearing in accordance with subsection (i) of this section.

(4) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation, if the referral is from the State Ethics Commission.

(c1) Preliminary Investigation. — The Committee may initiate a preliminary investigation if it determines that the complaint alleges facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee may take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations. The Committee shall provide written notification of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the Committee's decision to initiate an investigation.

(d) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.

(e) Investigation by the Committee of Matters Other Than Complaints. — The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. — Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Investigation. — If the Committee determines at the end of its preliminary investigation that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and to the legislator against whom the complaint was filed.

(h) Probable Cause Determination. — If at the end of its preliminary investigation, the Committee determines that probable cause exists to proceed with further investigation into the conduct of a legislator, the Committee shall determine the charges that will be the basis for further investigation of the complaint and provide written notice to the individual who filed the complaint and the legislator that the Committee will conduct further investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response to the charges with the Committee.

(h1) Consideration of Response and Notice of Hearing. — The Committee shall give full and fair consideration to the complaint and to the legislator's response to the complaint. If the Committee determines that the complaint cannot be resolved without further investigation and a hearing, or if the legislator requests a public hearing, the Committee shall hold a hearing on the charges against the legislator. The Committee shall send a notice of the hearing to the complainant and to the legislator. The notice shall contain the charges against the legislator and the time and place for the hearing. The Committee shall begin the hearing no sooner than 15 days and no later than 90 days after the date of the notice of hearing.

(i) Hearing. — All the following shall apply to any hearing on a complaint held by the Committee:

(1)- (3) Repealed by Session Laws 2009-549, s. 1, effective August 28, 2009.

(4) Oral evidence shall be taken only on oath or affirmation.

(5) The hearing shall be open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session.

(6) The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. — Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of the matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. — If the Committee dismisses a complaint or issues a private admonishment prior to commencing a hearing under subsection (i) of this section, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(*l*) Confidentiality. — Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the legislator under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under subsection (i) of this section commences the complaint, response, Committee's report to the house, and all other documents offered at the hearing in conjunction with the complaint, that are not otherwise privileged or confidential under law, shall be public records. If no hearing is held, at such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Concurrent Jurisdiction. — Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) Reports. — The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee. (2006-201, s. 12; 2007-347, s. 2; 2007-348, ss. 2-4; 2008-187, s. 20; 2008-213, ss. 1(a), 3; 2009-549, s. 1.)

Editor's Note. — Session Laws 2006-201, s. 25, made this section effective January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

This section was amended by Session Laws 2007-348, s. 3, in the coded bill drafting format provided by G.S. 120-20.1. In sub-subdivision (i)(3)b., the 2007 amendment struck through "held in closed session unless the public servant requests that the hearing be held in open session." following "The hearing shall be," but did not strike through the word "legislator." Session Laws 2008-187, s. 20, and Session Laws 2008-213, s. 3, corrected the oversight by deleting the word "legislator" from sub-subdivision (i)(3)b.

Effect of Amendments. — Session Laws 2008-187, s. 20, effective August 7, 2008, deleted "legislator" preceding "open to the public" in subdivision (i)(3)b.

Session Laws 2008-213, ss. 1(a) and 3, effective August 15, 2008, added subsection (a1); and deleted "legislator" preceding "open to the public" in subdivision (i)(3)b.

Session Laws 2009-549, s. 1, effective August 28, 2009, added the second through fourth sentences in subsection (a1); in subsection (b), rewrote the former subsection heading which read: "Complaint", added the present introductory language, and deleted subdivision (b)(3) which read: "The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation."; added subsection (c1); redesignated the former second and third sentences of subsection (c) as the present second and third sentences in subsection (c1) and rewrote the remainder of subsection (c); deleted former subsection (d), pertaining to referrals from the State Ethics Commission; in subsection (g), substituted both uses of "investigation" for "inquiry" and substituted "and to the legislator" for "and the legislator" near the end of the subsection; rewrote subsection (h); added subsection (h1); rewrote subsection (i); deleted "if the Committee finds substantial evidence of a violation of this Article or other unethical activities" at the end of subdivision (j)(2)c.; substituted "If the Committee dismisses a complaint or issues a private admonishment prior to commencing a hearing under subsection (i) of this section," for "In the case of a dismissal or private admonishment" at the beginning of subsection (k); substituted "under subsection (i) of this section" for "under this section" in the second sentence of subsection (*l*); added the subsection headings in subsections (m) and (n); and made minor stylistic changes.

§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics.

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(b).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d). The Committee shall edit for publication purposes as necessary to protect the identities of the individuals requesting opinions prior to submission to the State Ethics Commission. The

Committee may distribute the edited formal advisory opinion to members of the General Assembly prior to publication by the State Ethics Commission.

(g) Except as provided under subsection (f) of this section, a request made by a legislator to the Committee for an advisory opinion, advisory opinions issued under this section, recommended advisory opinions received from the State Ethics Commission, and any supporting documents submitted or caused to be submitted to the Committee in connection with requests for advisory opinions or recommended advisory opinions are confidential. Neither the identity of the legislator making the request nor the existence of the request may be revealed to any person without the consent of the legislator. A legislator requesting or receiving an advisory opinion may authorize the release to any other person, the State, or any governmental unit of the request, the recommended advisory opinion, the advisory opinion, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advisory opinions, recommended advisory opinions, advisory opinions issued by the Committee, and any supporting documents are not "public records" as defined in G.S. 132-1.

(h) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of an advisory opinion. (1975, c. 564, s. 1; 2006-201, s. 13; 2007-347, s. 3; 2007-348, ss. 5, 6; 2008-213, s. 2(a).)

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 2008-213, s. 2(d), provides: "This section is effective January 1, 2007, and applies to requests made on and after that date."

Effect of Amendments. — Session Laws 2008-213, s. 2(a), rewrote subsection (g), which formerly read: "Except as provided under subsection (f) of this section requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record." See Editor's Note for effective date and applicability.

§ 120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article and Chapter 138A and Chapter 120C of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government. (1975, c. 564, s. 1; 2006-201, s. 14.)

Editor's Note. — Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-25, provides, in part, that: "Prosecutions for offense or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 120-106. Article applicable to presiding officers.

The provisions of this Article shall apply to the presiding officers of the General Assembly. (1975, c. 564, s. 2.)

§§ 120-107 through 120-111: Reserved for future codification purposes.

Article 14A.

Committees on Pensions and Retirement.

§ 120-111.1. Creation.

A standing committee is hereby created in the House of Representatives to be known as the Committee on Pensions and Retirement, to consist of a minimum of four members to be appointed by the Speaker of the House of Representatives. A standing committee is hereby created in the Senate to be known as the Committee on Pensions and Retirement, to consist of the following members at the minimum: the Chairmen of the Senate Committees on Appropriations, Finance and Ways and Means. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 2; 1989 (Reg. Sess., 1990), c. 899.)

§ 120-111.2. Duties.

With respect to public officers and public employees to whom State-administered retirement benefit or pension plans are applicable, the Senate and House Committees on Pensions and Retirement shall:

(1) Study the benefits, including those available under Social Security and any other federal programs available to the public officers and employees.

(2) Consider all aspects of retirement and pension financing, planning and operation, including the financing of accrued liabilities of each retirement or pension fund, health program, and other fringe benefits.

(3) Request the Governor, the State Treasurer, the State Auditor and any other agency or department head which has information relevant to these committees' study to prepare any reports deemed necessary by the committee.

(4) Recommend legislation which will insure and maintain sound retirement and pension policy for all funds.

(5) Analyze each item of proposed pension and retirement legislation in accordance with Article 15 of Chapter 120 of the General Statutes.

(6) Study, analyze, and report on related subjects directed to be studied by joint resolution, resolution of either house of the General Assembly, or by direction of the Speaker of the House or President of the Senate. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 3; 1987 (Reg. Sess., 1988), c. 1091, s. 4; 1989, c. 261; s. 2.)

§ 120-111.3. Analysis of legislation.

Every bill, which creates or modifies any provision for the retirement of public officers or public employees or for the payment of retirement benefits or of pensions to public officers or public employees, shall, upon introduction in either house of the General Assembly, be referred to the Committee on Pensions and Retirement of each house. When the bill is reported out of committee it shall be accompanied by a written report by the Committee on Pensions and Retirement containing, among other matters which the Committee deems relevant, the actuarial note required by Article 15 of Chapter 120 of the General Statutes, and pursuant to the Rules of the General Assembly, and an evaluation of the proposed legislation's actuarial soundness and adherence to sound retirement and pension policy. Any bill referred to the Committee on Pensions and Retirement cannot be further considered by that house until such bill has received a favorable report, a report without prejudice, or has been recalled from that committee.

Whenever a bill is considered by the Committee on Pensions and Retirement that proposes changes in the benefits of any State-administered retirement or pension plan to be financed by unencumbered actuarial experience gains generated either through a change in actuarial assumptions adopted by the plan for the previous budget year or through a continuation of the actuarial assumptions adopted by the plan for the previous budget year, the Committee shall give equal consideration to the effects that such unencumbered actuarial gains would have upon annual employer or State contributions to the plan and to the amount by which the plan's unfunded accrued liabilities, if any, might be reduced. If such unencumbered actuarial experience gains could be used to modify annual employer or State contributions to the plan resulting in a corresponding effect upon State appropriations, the Committee on Pensions and Retirement shall, upon a favorable report, refer the bill to the Committee on Appropriations of the same house before the bill is considered by that house. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 4; 1985, c. 187; c. 400, s. 10; 1987 (Reg. Sess., 1988), c. 1110, s. 11.1.)

§ 120-111.4. Staff and actuarial assistance.

Upon application of the chairman of the Senate or House Committee on Pensions and Retirement, the Legislative Services Commission shall provide staff, including actuarial assistance, to aid the committee in its work. (1979, 2nd Sess., c. 1250, s. 1; 1981, c. 85, s. 5.)

Article 15.

Legislative Actuarial Note Act.

§ 120-112. Title.

This Article may be cited as the "Legislative Actuarial Note Act". (1977, c. 503, s. 1; 1987 (Reg. Sess., 1988), c. 1091, s. 1.)

Editor's Note. — Session Laws 1993, c. 553, s. 35, effective July 24, 1993, substituted "Legislative" for "Retirement Systems" in the Article title.

Cross References. — As to the Committees on Pensions and Retirement of the House and Senate, see G.S. 120-111.1 through 120-111.4.

§ 120-113. Duties and functions of Fiscal Research Division.

(a) The Fiscal Research Division of the Legislative Services Commission of the General Assembly shall have authority to evaluate on a continuing basis all aspects of any State, municipal, or other retirement system, funded in whole or in part out of public funds, and all aspects of any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, as to actuarial soundness. The Fiscal Research Division shall make periodic detailed reports to the General Assembly specifically setting forth the findings of such evaluations. In conducting its evaluations the division shall have complete access without charge to all books, accounts, and personnel of the retirement systems, and to all books, accounts, and personnel of agencies and contractors charged with providing programs of hospital, medical, disability, or related benefits for teachers and State employees.

(b) No provision of this Article shall be deemed or in any way construed to preclude the authority of any retirement system funded in whole or in part out of public funds to hire an actuary for any such retirement system. No provision of this Article shall be deemed or in any way construed to preclude the authority of any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, to hire an actuary for any such program.

(c) The Fiscal Research Division shall, in addition to the powers and functions conferred by this Article, render such assistance as the Legislative Services Commission may require with respect to any other matter requiring actuarial evaluations. (1977, c. 503, s. 2; 1987 (Reg. Sess., 1988), c. 1091, s. 2.)

§ 120-114. Actuarial notes.

(a) Every bill, joint resolution, and simple or concurrent resolution introduced in the General Assembly proposing any change in the law relative to any State, municipal, or other retirement system, funded in whole or in part out of public funds, or any program of hospital, medical, disability, or related benefits provided for teachers and State employees, funded in whole or in part by State funds, shall have attached to it at the time of its consideration by any committee of either house of the General Assembly a brief explanatory statement or note which shall include a reliable estimate of the financial and actuarial effect of the proposed change in any such retirement system or program of hospital, medical, disability, or related benefits. This actuarial note shall be attached to the original of each proposed bill or resolution which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an actuarial note and shall not constitute a part of the law or other provisions or expression of legislative intent proposed by the bill or resolution.

(b) The author of each bill or resolution shall present a copy of the bill or resolution, with his request for an actuarial note, to the Fiscal Research Division which shall have the duty to prepare said actuarial note as promptly as possible. Actuarial notes shall be prepared and transmitted to the author or authors no later than two weeks after the request for the actuarial note is made, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both.

(c) The author of each bill or resolution shall also present a copy of the bill or resolution to any actuary employed by the retirement system, or to any actuary employed by a program of hospital, medical, disability, or related benefits provided for teachers and State employees, affected by the bill or resolution in question. Actuarial notes shall be prepared and transmitted to the author or authors of the measure no later than two weeks after the request for the actuarial note is received, unless an extension of time is agreed to by the author or authors as being necessary in preparation of the note. Any person who signs an actuarial note knowing it to contain false information shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. The provisions of this subsection may be waived for any local government retirement or pension plans not administered by the State, and for any local government program of hospital, medical, disability, or related benefits for local government employees not administered by the State.

(d) The note shall be factual and shall, if possible, provide a reliable estimate of both the immediate effect and, if determinable or reasonably foreseeable, the long range fiscal and actuarial effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. No comment or opinion shall be included in the actuarial note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(e) At any time any committee of either house reports any legislative instrument, to which an actuarial note or notes are attached at the time of committee consideration, with any amendment of such nature as would substantially affect the cost to or the revenues of any retirement system, or program of hospital, medical, disability, or related benefits for teachers and State employees, as stated in the actuarial note or notes attached to the measure at the time of such consideration, it shall be the responsibility of the chairman of the committee reporting such instrument to obtain from the Fiscal Research Division an actuarial note of the fiscal and actuarial effect of the change proposed by the amendment reported. Such actuarial note shall be attached to the report of the committee on the measure as a supplement thereto. A floor amendment to a bill or resolution to which an actuarial note was attached at the time of committee consideration of the bill or resolution shall not be in order, if the amendment affects the costs to or the revenues of a retirement system, or program of hospital, medical, disability, or related benefits provided for teachers and State employees, unless the amendment is accompanied by an actuarial note, prepared by the Fiscal Research Division, as to the actuarial effect of the amendment. (1977, c. 503, s. 3; 1985, c. 189; 1987 (Reg. Sess., 1988), c. 1091, s. 3; 1989, c. 261.)

§§ 120-115 through 120-120: Reserved for future codification purposes.

ARTICLE 16.

Legislative Appointments to Boards and Commissions.

§ 120-121. Legislative appointments.

(a) In any case where the General Assembly is called upon by law to appoint a member to any board or commission, that appointment shall be made by enactment of a bill.

(b) A bill may make more than one appointment.

(c) The bill shall state the name of the person being appointed, the board or commission to which the appointment is being made, the effective date of the appointment, the date of expiration of the term, the county of residence of the appointee, and whether the appointment is made upon the recommendation of the Speaker of the House of Representatives, President Pro Tempore of the Senate, or the President of the Senate.

(d) Nothing in this section or any other statute precludes any member of the General Assembly from proposing an amendment to any bill making an appointment to a board or commission, or from introducing a bill to make an appointment to a board or commission, where an appointment by the General Assembly is authorized by law. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 717, s. 111; 1985, c. 290, s. 9.)

§ 120-122. Vacancies in legislative appointments.

When a vacancy occurs in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 20 days after the date of adjournment; (iii) after sine die adjournment of the regular session; or (iv) when the term of office expires and a successor has not been appointed, then the Governor may appoint a person to serve until the expiration of the term or until the General Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. When a person is holding over in office after the expiration of the term, for the purpose of this section that office may be filled as if it were vacant. Before making an appointment, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation. After receiving the written recommendation, the Governor must within 30 days either appoint the person recommended or inform the officer who made the recommendation that he is rejecting the recommendation. Failure to act within 30 days as required under the provisions of the preceding sentence shall be deemed to be approval of the candidate, and the candidate shall be eligible to enter the office in as full and ample extent as if the Governor had executed the appointment. The Governor shall not appoint a person other than the person so recommended. Any position subject to initial appointment by the General Assembly but not filled prior to sine die adjournment of the Session at which the position was created or adjournment to a date certain which date is more than 20 days after the date of adjournment of the session at which the position was created may be filled by the Governor under this section as if it were a vacancy occurring after the General Assembly had made an appointment. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 717, ss. 112, 113; 1985, c. 752, ss. 1, 2; 1993, c. 563, s. 13; 2004-187, s. 5; 2004-195, s. 7.)

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.
(1a) Not effectuated.
(1b) The Rules Review Commission as established by G.S. 143B-30.1.
(2) Repealed by Session Laws 2007-484, s. 17, effective August 30, 2007.
(3) Repealed by Session Laws 2007-323, s. 19.1(c), effective July 1, 2007.
(3a) The State Banking Commission, as established by G.S. 53-92.
(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.
(5) The Board of Transportation, as established by G.S. 143B-350.
(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.

(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33.
(7) The Coastal Resources Commission, as established by G.S. 113A-104.
(8) The Environmental Management Commission, as established by G.S. 143B-283.
(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.
(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.
(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.
(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
(12) Repealed by Session Laws 1987, c. 71, s. 4.
(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
(16) Repealed by Session Laws 1985, c. 479, s. 153(b).
(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
(19) Repealed by Session Laws 1989, c. 500, s. 107(b).
(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).
(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.
(23) Repealed by Session Laws 1993, c. 501, s. 12.
(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
(25) Repealed by Session Laws 2002-126, s. 6.6(b), effective November 12, 2002.
(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.
(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).

(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.

(35) The Board of Trustees of the State Health Plan for Teachers and State Employees, as established by G.S. 135-39.

(36) Repealed by Session Laws 2004-199, s. 27(b), effective August 17, 2004.

(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.

(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.

(39) Repealed by Session Laws 1987, c. 71, s. 4.

(40) The Alarm System Licensing Board, as established by G.S. 74D-4.

(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).

(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.

(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.

(44) The Child Care Commission, as established by G.S. 143B-168.3.

(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.

(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.

(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.

(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.

(48) Reserved for future codification purposes.

(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.

(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.

(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.

(51) The State Building Commission, as established by G.S. 143-135.25.

(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.

(53) **(Effective retroactively to September 1, 1997)** The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.51.

(54) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.

(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.

(56) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.

(57) Repealed by Session Laws 2004-129, s. 35, effective July 1, 2004.

(58) The Appraisal Board created in G.S. 93E-1-5.

(59) Repealed by Session Laws 1997-286, s. 7.

(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.

(60) Repealed by Session Laws 1997-443, s. 8.26b.

(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.

(62) The North Carolina's Northeast Commission, as established by G.S. 158-8.2.

(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].

(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.
(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.
(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.
(65) Repealed by Session Laws 1998-217, s. 45.
(66) The Local Government Commission, as established by G.S. 159-3.
(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8.
(68) The State Personnel Commission.
(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part.
(70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(72) Repealed by Session Laws 2008-134, s. 73(c), effective July 28, 2008.
(73) Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.
(74) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes.
(75) The North Carolina Turnpike Authority.
(76) The Economic Investment Committee established under G.S. 143B-437.54.
(77) **(Repealed effective December 31, 2011)** The e-NC Authority created in Part 2F of Article 10 of Chapter 143B of the General Statutes.
(78) The North Carolina State Lottery Commission, as established in Chapter 18C of the General Statutes. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42; 1998-181, s. 3; 1998-212, s. 12.37B(e); 1998-217, s. 45; 1998-224, s. 19(c); 1998-225, s. 1.2; 2000-147, s. 5; 2000-148, s. 2; 2000-149, ss. 2, 5; 2000-162, s. 2; 2001-474, s. 13; 2001-487, s. 21(b); 2002-126, s. 6.6(b); 2002-133, s. 5; 2002-172, s. 2.5; 2003-416, s. 2; 2003-425, ss. 2, 3; 2004-129, s. 35; 2004-199, s. 27(b); 2005-344, s. 8; 2006-66, s. 12.3(a); 2007-93, s. 1; 2007-323, ss. 19.1(c), 28.22A(o); 2007-345, s. 12; 2007-484, s. 17; 2008-134, s. 73(c).)

Cross References. — As to the Rules Review Commission, see G.S. 143B-30.1 et seq.

Editor's Note. — G.S. 135-39, referred to in subdivision (35), was was recodified as G.S. 135-38.2 by Session Laws 2008-168, s. 2(e), effective July 1, 2008, and has been renumbered as G.S. 135-44 at the direction of the Revisor of Statutes.

Section 106-720, referred to in subsection (49) above, has been repealed.

Section 106-727, referred to in subsection (50) above, has been repealed.

Section 115C-489.4 referred to in subdivision (52) has been repealed.

Section 143B-426.30 referred to in the above 120-123 was recodified as 143B-472.26 by Session Laws 2001-424, s. 7.6.

The majority of section 17.9 of House Bill 229 of the 1995 of the General Assembly, which is referred to above in subdivision (63), has been codified as 116.30.01 at the direction of the Revisor of Statutes.

Session Laws 1983, c. 832, which added subdivision (42), provided in s. 6, as amended by Session Laws 1991, c. 301, s. 1: "This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act." Such an appropriation was made. Session Laws 1983, c. 832, s. 6 further provided: "No claims may be filed under this act for any criminally injurious conduct occurring before the effective date of this act."

Session Laws 1985, c. 746, s. 6, added a subdivision (1a) to this section. Section 18.2 of Session Laws 1985, c. 746, provided: "The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

Section 19 of Session Laws 1985, c. 746, provided that sections 5 and 6 of the act, which added G.S. 143A-55.2 through 143A-55.6 and added subdivision (1a) of this section, would become effective 30 days from the date the Supreme Court issued an advisory opinion on the constitutionality of those sections unless the opinion stated that those sections were unconstitutional, in which event those sections would not become effective. Section 19 of Session Laws 1985, c. 746, further provided that the act would not affect contested cases commenced before Jan. 1, 1986. Furthermore, Session Laws 1985, c. 746, s. 19 provided that the act would expire Jan. 1, 1992, and would not be effective on or after that date. However, this expiration provision was deleted by Session Laws 1991, c. 103, s. 1.

Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 7 deleted the word "advisory" preceding "opinion" in the third sentence of Session Laws 1985, c. 746, s. 19.

By letter dated October 28, 1985, the Supreme Court declined to issue an advisory opinion as contemplated by Session Laws 1985, c. 746, ss. 18.2 and 19. See the note headed "Advisory Opinion" in the Case Notes below.

At the direction of the Revisor of Statutes, subdivision (1a) of this section, as enacted by Session Laws 1985, c. 746, s. 6, has been shown as "Not effectuated." For similar provision, see subdivision (1b), as added by Session Laws 1985 (Reg. Sess., 1986), c. 1028, s. 33.

The number of subdivision (62) of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 321, s. 309.1(b) having been subdivision (60).

The number of subdivision (72) was assigned by the Revisor of Statutes, the number in Session Laws 2000-148, s. 2, having been subdivision (70). The number of subdivision (73) was assigned by the Revisor of Statutes, the number in Session Laws 2000-149, s. 2, having been subdivision (71). The number of subdivision (74) was assigned by the Revisor of Statutes, the number in Session Laws 2000-162, G.S. 2, having been subdivision (70).

Session Laws 2000-147, s. 8(a)-(c), provides:

"(a) Interpretation of Act. — The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

"(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

"(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes."

Session Laws 2000-147, s. 8(d), contains a severability clause.

Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, makes the act effective August 2, 2000. The North Carolina Rural Internet Access Authority created in the act is dissolved effective December 31, 2003. The act is repealed effective December 31, 2003. Part 2E of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(73), as enacted by this act, are repealed effective December 31, 2003.

Session Laws 2001-487, s. 21(c), repealed Session Laws 1997-148, s. 8, which had stated in its introductory language that "G.S. 20-123(57) reads as rewritten." There is no subdivision (57) in G.S. 20-123, and it appears that the amendment was intended to be for G.S. 120-123. The attempted amendment would have substituted "G.S. 143B-472.41" for "G.S.

143B-426.21" in subdivision (57).

Session Laws 2002-126, s. 6.6(f), provides: "The Attorney General within 45 days of this section becoming law [approved September 30, 2002] shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered." Session Laws 2002-126, s. 6.6(b), provided for the repeal of G.S. 120-123(25).

On November 12, 2002, the Office of the Attorney General issued an opinion, as required by Session Laws 2002-126, s. 6.6(f), stating that the North Carolina State Ports Authority is not a common carrier subject to the Railway Labor Act by virtue of Session Laws 2002-126, s. 6.6(a)-(e). Session Laws 2002-126, s. 6.6(b), repealed subdivision (25).The opinion should be available on the official website of the Office of the Attorney General by the end of 2002 (http://www.jus.state.nc.us/lrframe.htm).

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2002-133, s. 5, and Session Laws 2002-172, s. 2.5, each added a subdivision (75) to this section. The subdivision (75) as added by Session Laws 2002-172, s. 2.5, has been renumbered as subdivision (76) at the direction of the Revisor of Statutes.

Session Laws 2002-172, s. 7.1, contains a severability clause.

Session Laws 2003-425, s. 4, as amended by Session Laws 2006-66, s. 12.3(a), provides: "Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011."

Session Laws 2005-344, which enacted the North Carolina State Lottery, in s. 14, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act."

Session Laws 2006-66, s. 12.3(c), provides: "Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars ($500,000) shall be allocated to the e-NC Authority.

"The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"The e-NC Authority shall report to the 2007 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 13.16, provides: "(a) The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

"(b) The e-NC Authority shall report to the 2008 General Assembly on the following:

"(1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access high-speed Internet.

"(2) An implementation plan for the training of citizens and businesses in distressed urban areas.

"(3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in these communities and to use the Internet to enhance the productivity of their businesses.

"The e-NC Authority shall, by September 30, 2007, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities."

Session Laws 2007-323, s. 19.1(b), provides: "Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Governor shall redesignate the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity. The Governor shall follow the federal statutory procedure for redesignation found at 45 C.F.R. § 1386.20, with a target transfer date of July 1, 2007."

Session Laws 2007-323, s. 19.1(*l*), provides: "This section is effective on the effective date of the redesignation and transfer of the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402. Any funds appropriated to the Governor's Advocacy Council for Persons with Disabilities revert to the General Fund on that date." The redesignation and transfer were effective July 1, 2007.

Session Laws 2007-323, s. 28.22A(n), provides: "If on July 1, 2008, there are State employees or retired employees that are enrolled in the Teachers' and State Employees' Comprehensive Major Medical Plan (indemnity plan) on June 30, 2008, and that have not elected one of the optional PPO benefit plans available under the State Health Plan for Teachers and State Employees, then the Plan shall enroll those employees or retired employees in the Standard PPO Option, or its equivalent, effective July 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-323, s. 28.22A(o), as amended by Session Laws 2007-345, s. 12, effective July 1, 2008, substituted "State Health Plan for Teachers and State Employees" for "Teachers' and State Employees' Comprehensive Major Medical Plan" in division (35).

Session Laws 2008-134, s. 73(c), effective July 28, 2008, repealed subdivision (72) which read: "The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

CASE NOTES

Advisory Opinion. — By letter of October 28, 1985, addressed to the President of the Senate and the Speaker of the House, the Supreme Court declined to issue an advisory opinion as contemplated by Session Laws 1985, c. 746, s. 18.2, on the grounds that to issue such an opinion would be to place the court directly in the stream of the legislative process, and in view of the prerogative of the General Assembly to first address and determine the constitutionality of its own legislation. See In re Advisory Opinion, 314 N.C. 679, 335 S.E.2d 890 (1985).

§§ 120-124 through 120-128: Reserved for future codification purposes.

ARTICLE 17.

Confidentiality of Legislative Communications.

§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, ss. 1-3; 2006-264, s. 29(i).)

Editor's Note. — Session Laws 2009-129, s. 1, stated in its prefatory language that "G.S. 120-29(2) reads as rewritten." There is no subdivision (2) in G.S. 120-29, and it appears that the amendment was intended for G.S. 120-129(2). The amendment would have inserted "students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission," in subdivision (2).

§ 120-130. Drafting and information requests to legislative employees.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) Any supporting documents submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting or information requests or supporting documents are not "public records" as defined by G.S. 132-1. (1983, c. 900, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

§ 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

(1) Bill or resolution and it has been introduced;
(2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;
(3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or
(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 4; 1993 (Reg. Sess., 1994), c. 570, s. 9.)

OPINIONS OF ATTORNEY GENERAL

Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports.

(a) A request, including any accompanying documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee of his or her agency shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any accompanying documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any accompanying documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee of his or her agency may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-196, s. 1(b).)

Editor's Note. — Session Laws 2008-196, s. 3, provides: "Section 1 of this act is effective June 14, 2007. The remainder of this act is effective when it becomes law [August 8, 2008], and violations of Section 1 of this act prior to the date this act becomes law [August 8, 2008] may not be grounds for disciplinary action."

Effect of Amendments. — Session Laws 2008-196, s. 1(b), added "and evaluation reports" in the section heading; and rewrote the section. See Editor's note for applicability and effective date.

§ 120-132. Testimony by legislative employees.

No present or former legislative employees may be required to disclose any information that the individual, while employed or retained by the State, may have acquired:

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, or in any office of a legislator;

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

Notwithstanding the provisions of the preceding sentence, the presiding judge of a court of competent jurisdiction may compel that disclosure, if in his opinion, the same is necessary to a proper administration of justice. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 5.)

§ 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law. (1983, c. 900, s. 1; 1995, c. 20, s. 13.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22 and to Art. III, § 5, were approved.

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Public Access to Legislator's Redistricting Communications. — Communications between legislators and members of the public about redistricting issues are generally public records without any limitation as to the date of the communications; however, communications between legislators and legislative employees, including employees serving as legal counsel to members, become public records only upon the date of the enactment of the redistricting plan which is the subject of the communications; and each legislator is properly treated as the custodian of his or her e-mail communications whether directly available in the legislator's computer or stored in the legislature's computer system. See opinion of Attorney General to Mr. Terrence D. Sullivan, Director, Research Division, North Carolina General Assembly, 2002 N.C. AG LEXIS 11 (2/14/02).

§ 120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of employees, for referral to the academic institution for appropriate discipline in the case of law student externs, and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 6; 2009-129, s. 2.)

Effect of Amendments. — Session Laws 2009-129, s. 2, effective June 19, 2009, inserted "for referral to the academic institution for appropriate discipline in the case of law student externs" near the middle of this section.

§§ 120-135 through 120-139: Reserved for future codification purposes.

ARTICLE 18.

Review of Proposals to License New Occupations and Professions.

§§ 120-140 through 120-149: Expired.

Editor's Note. — This Article was enacted by Session Laws 1983 (Reg. Sess., 1984), c. 1089, s. 1, effective August 1, 1984, and expired pursuant to s. 2 of that act on January 1, 1987. Sections 120-140 through 120-145 were amended by Session Laws 1985, c. 173, ss. 1-4. Sections 120-146 through 120-149 had been reserved for future codification purposes.

ARTICLE 18A.

Review of Proposals to License New Occupations and Professions.

§ 120-149.1. Findings and purpose.

The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing boards have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing boards.

The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing boards, it will be better able to evaluate the need for new licensing boards. To this end, it is the purpose of this Article to assure that no new licensing board shall be established unless the following criteria are met:

(1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) The profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Practice of the profession or occupation requires specialized skill or training;

(4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and

(5) The public is not effectively protected by other means; and

(6) Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services. (1987, c. 180, s. 1.)

§ 120-149.2. Definitions.

As used in this Article:

(1) "Assessment report" means a report that initially describes the need for and the fiscal impact of a new licensing board.

(2) "Committee" means the Legislative Committee on New Licensing Boards.

(3) "Licensing" means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a condition for using or advertising specified titles or descriptions in connection with a particular

occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.

(4) "New licensing board" includes each of the following:

a. A proposed new board with licensing authority over an occupation or profession; and

b. An existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.

(5) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared. (1987, c. 180, s. 1; 1997-456, s. 27.)

Editor's Note. — Subdivisions (4)(i) and (4)(ii) were renumbered as subdivisions (4)a. and (4)b. pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 120-149.3. Assessment of new licensing boards.

(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but does not become law during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection. (1987, c. 180, s. 1; 1995, c. 20, s. 14.)

Editor's Note. — Session Laws 1995, c. 20, s. 17 provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, to be decided in the November, 1996, election, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997. The constitutional amendments to N.C. Const., Art. II, § 22 and Art. III, § 5, were approved.

§ 120-149.4. Procedure and criteria to be used in preparation of assessment reports.

(a) The Legislative Committee on New Licensing Boards shall conduct an evaluation of the need for each new licensing board.

If a legislator or other person or organization is seeking to establish a new licensing board, that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-149.1 are met, and furnish the Committee additional information to show:

(1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;
(2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;
(3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
(4) That other states have regulatory provisions similar to the one proposed;
(5) How the public will benefit from regulation of the occupation or profession;
(6) How the occupation or profession will be regulated, including the qualifications and disciplinary proceedings to be applied to practitioners;
(7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;
(8) That no other licensing board regulates similar or parallel activities;
(9) That the educational requirements for licensure, if any, are fully justified; and
(10) Any other information the Committee considers relevant to the proposed regulatory plan. The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions

to be completed by the person or organization requesting the assessment report and a copy of this Article.

(b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing board, the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing board and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing board. The Committee shall make specific findings in its report on each of the following:

(1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
(2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;
(3) Whether practice of the profession or occupation requires specialized skill or training;
(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;
(5) Whether the public can be effectively protected by other means; and
(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(c) The Committee may also evaluate the legislative proposal itself in terms of its clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees.

(d) The Committee shall furnish a copy of the preliminary assessment report to the requesting legislator or sponsor at least seven days prior to the Committee's final meeting on the proposal, unless the sponsor or requesting legislator waives this requirement. The requesting legislator or sponsor shall have an opportunity at the final meeting to respond to the preliminary report.

(e) The Committee shall adopt a final assessment report on the proposal at the final meeting and shall issue the report within 14 days of the issuance of the preliminary report; provided that if the Committee wishes to further review or consider the sponsor's or requesting legislator's responses to the preliminary assessment report, the final report shall be issued within 21 days of the issuance of the preliminary report. If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession. (1987, c. 180, s. 1.)

§ 120-149.5. Hearings.

(a) Before submitting a preliminary or final assessment report, the Committee may, in its discretion, hold one or more public hearings in the Legislative Building or Legislative Office Building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider any or all of the matters to be addressed by the reports. (1987, c. 180, s. 1.)

§ 120-149.6. Legislative Committee on New Licensing Boards.

(a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President Pro Tempore of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President Pro Tempore of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President Pro Tempore of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission. (1987, c. 180, s. 1; 1991, c. 739, s. 16.)

ARTICLE 19.

Commission on Agriculture and Forestry Awareness.

§ 120-150. Creation; appointment of members.

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor;
(2) Three appointed by the President Pro Tempore of the Senate;
(3) Three appointed by the Speaker of the House;
(4) The chairman of the House Agriculture Committee;
(5) The chairman of the Senate Agriculture Committee;
(6) The Commissioner of Agriculture or the Commissioner's designee;
(7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
(8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee;
(9) The Master of the North Carolina State Grange or the Master's designee;
(10) The Secretary of Environment and Natural Resources or the Secretary's designee; and
(11) The President of the North Carolina Forestry Association, Inc., or the President's designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively. (1985, c. 792, s. 20.1; 1989, c. 727, s. 218(81); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991 (Reg. Sess., 1992), c. 785, s. 1; 1993, c. 23, s. 1; 1995, c. 490, s. 5; 1997-443, s. 11A.119(a); 2001-474, s. 14.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 785, substituted "Agriculture and Forestry" for "Agriculture, Forestry, and Seafood" throughout this article, but did not make this substitution in the article heading.

§ 120-151. Advisory Committee.

Upon proper motion and by a vote of a majority of the members present, the Commission may appoint an Advisory Committee. Members of the Advisory Committee should be from the various organizations, commodity groups, associations, and councils representing agriculture and forestry. The purpose of the Advisory Committee shall be to render technical advice and assistance to the Commission. The Advisory Committee shall consist of no more than 20 members plus a chairman who shall be appointed by the cochairmen of the Commission. (1985, c. 792, s. 20.1; 1991 (Reg. Sess., 1992), c. 785, s. 2.)

§ 120-152. Subsistence and travel expenses.

The members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Members who are officials or employees of the State of North Carolina shall receive subsistence and travel allowances at the rate set forth in G.S. 138-6. All other members plus the Chairman of the Advisory Committee shall be paid the per diem allowances at the rates set forth in G.S. 138-5. Other members of the Advisory Committee shall serve on a voluntary basis and not receive subsistence and travel expenses. (1985, c. 792, s. 20.1.)

§ 120-153. Facilities and staff.

The Commission may hold its meetings in the State Legislative Building with the approval of the Legislative Services Commission. The Legislative Services Commission shall provide necessary professional and clerical assistance to the Commission. (1985, c. 792, s. 20.1.)

§ 120-154. Duties.

The Commission shall bring to the attention of the General Assembly the influence of agriculture and forestry on the economy of the State, develop alternatives for increasing the public awareness of agriculture and forestry, study the present status of agriculture and forestry, identify problems limiting future growth and development of the industry, develop an awareness of the importance of science and technological development to the future of agriculture and forestry industries, and formulate plans for new State initiatives and support for agriculture and forestry and for the expansion of opportunities in these sectors.

In conducting its study the Commission may hold public hearings and meetings across the State.

The Commission shall report to the General Assembly at least one month prior to the first regular session of each General Assembly. (1985, c. 792, s. 20.1; 1991 (Reg. Sess., 1992), c. 785, s. 3.)

§§ 120-155 through 120-157: Reserved for future codification purposes.

ARTICLE 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

§ 120-158. Creation of Commission.

(a) There is created the Joint Legislative Commission on Municipal Incorporations, referred to in this Article as "Commission".

(b) The Commission shall consist of six members, appointed as follows:

(1) Two Senators appointed by the President Pro Tempore of the Senate;

(2) Two House members appointed by the Speaker;

(3) One city manager or elected city official, appointed by the President Pro Tempore of the Senate from a list of three eligible persons nominated by the North Carolina League of Municipalities; and

(4) One county commissioner or county manager, appointed by the Speaker from a list of three eligible persons nominated by the North Carolina Association of County Commissioners. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1991, c. 739, s. 17.)

§ 120-159. Terms.

Members shall be appointed for terms ending June 30, 1987, and subsequently for two-year terms beginning July 1, 1987, and biennially thereafter. A member eligible when appointed may continue for the remainder of the term regardless of the member's continued eligibility for the category. The Commission shall elect a chairman from its membership for a one-year term. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-160. Compensation.

Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-161. Facilities and staff.

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the School of Government at the University of North Carolina at Chapel Hill, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989, c. 727, s. 218(82); 1997-443, s. 11A.119(a); 2006-264, s. 29(j).)

§ 120-162: Reserved for future codification purposes.

Part 2. Procedure for Incorporation Review.

§ 120-163. Petition.

(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation. The voter shall sign the petition and also clearly print that voter's name adjacent to the signature. The petition must also contain the voter's residence address and date of birth.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt. That period of 15 working days shall be tolled for any period of time that is also either two weeks before or one week after a primary or election being conducted by the county board of elections.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar ($100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 1; 2001-353, s. 6.)

Editor's Note. — Session Laws 1999-458, s. 12, provides that section 1 of this act, which added the second through fourth sentences of subsection (c), applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after August 13, 1999. Sections 1 through 11 of this act do not apply to any community which first filed a petition with the Commission prior to July 20, 1999.

§ 120-164. Notification.

(a) Not later than five days before submitting the petition to the Commission, the petitioners shall notify:

(1) The board or boards of county commissioners of the county or counties where the proposed municipality is located;

(2) All cities within that county or counties; and

(3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

(b) The petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-165. Initial inquiry.

(a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. For purposes of this section, "municipality" means a city as defined by G.S. 160A-1(2) or a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) The proposed municipality is entirely on an island that the nearby city is not on;

(2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or

(4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 25; 1998-150, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-35, s. 2.)

§ 120-167. Additional criteria; population.

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 2.)

Editor's Note. — Session Laws 1999-458, s. 12, provides that section 1 of the act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after August 13, 1999, and that sections 1 through 11 of the act, s. 2 of which added the language "and a population density ...per square mile," do not apply to any community which first filed a petition with the Commission prior to July 20, 1999.

§ 120-168. Additional criteria; development.

The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 3.)

Editor's Note. — Session Laws 1999-458, s. 12, provides that section 1 of the act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after August 13, 1999, and that sections 1 through 11 of the act, s. 3 of which deleted "Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound" from the beginning of the first sentence, do not apply to any community which first filed a petition with the Commission prior to July 20, 1999.

§ 120-169. Additional criteria; area unincorporated.

The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by G.S. 153A-1(1), or if any of the proposed municipality is included within the boundary of a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 2005-35, s. 3.)

§ 120-169.1. Additional criteria; level of development, services; financial impact on other local governments.

(a) Repealed by Session Laws 1999-458, s. 4, effective August 13, 1999.

(b) Services. — The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c).

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality. (1998-150, s. 3; 1999-458, s. 4.)

Editor's Note. — Session Laws 1999-395, s. 12, provides that section 1 of the act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after August 13, 1999, and that sections 1 through 11 of the act, s. 4 of which added "financial impact on other local governments" at the end of the section heading, repealed subsection (a), regarding level of development, rewrote subsection (b), and added subsection (c) do not apply to any community which first filed a petition with the Commission prior to July 20, 1999.

Legal Periodicals. — See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

§ 120-170. Findings as to services.

The Commission may not make a positive recommendation unless it finds that the proposed municipality can provide at a reasonable tax rate the services requested by the petition, and finds that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. In making findings under this section, the Commission shall take into account municipal services already being provided. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-171. Procedures if findings made.

(a) If the Commission finds that it may not make a positive recommendation because of the provisions of G.S. 120-166 through G.S. 120-170, it shall make a negative recommendation to the General Assembly. The report to the General Assembly shall list the grounds on which a negative recommendation is made, along with specific findings. If a negative recommendation is made, the Commission shall notify the petitioners of the need for a legally sufficient description of the proposed municipality if the proposal is to be considered by the General Assembly. At the request of a majority of the members of the interim board named in the petition, the Commission may conduct a public hearing and forward any comments or findings made as a result of that hearing along with the negative recommendation.

(b) If the Commission determines that it will not be barred from making a positive recommendation by G.S. 120-166 through G.S. 120-170, it shall require that petitioners have a legally sufficient description of the proposed municipality prepared at their expense as a condition of a positive recommendation.

(c) If the Commission determines that it is not barred from making a positive recommendation, it shall make a positive recommendation to the General Assembly for incorporation.

(d) The report of the Commission on a petition shall be in a form determined by the Commission to be useful to the General Assembly. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-172. Referendum.

Based on information received at the public hearing, the Commission may recommend that any incorporation act passed by the General Assembly shall be submitted to a referendum, except if the petition contained the signatures of fifty percent (50%) of registered voters the Commission shall not recommend a referendum. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-173. Modification of petition.

With the agreement of the majority of the persons designated by the petition as an interim governing board, the Commission may submit to the General Assembly recommendations based on deletion of areas from the petition, as long as there are no noncontiguous areas. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-174. Deadline for recommendations.

If the petition is timely received under G.S. 120-163(e), the Commission shall make its recommendation to the General Assembly no later than 60 days after convening of the next regular session after submission of the petition. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§§ 120-175 through 120-179: Reserved for future codification purposes.

Article 21.

The North Carolina Study Commission on Aging.

§ 120-180. Commission; creation.

The North Carolina Study Commission on Aging is created to study and evaluate the existing system of delivery of State services to older adults and to recommend an improved system of delivery to meet the present and future needs of older adults. This study shall be a continuing one and the evaluation ongoing, as the population of older citizens grows and as old problems faced by older citizens magnify and are augmented by new problems. (1987, c. 873, s. 13.1.)

Editor's Note. — Session Laws 2005-23, s. 1, provides: "The Department of Health and Human Services, Adult Protective Services Task Force, shall collaborate with stakeholders and other persons interested in improving adult protective services and report its findings and recommendations to the North Carolina Study Commission on Aging and to the Legislative Study Commission on State Guardianship Laws on or before April 1, 2006."

Session Laws 2006-108, s. 1(a)-(c), provides: "(a) The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client.

"(b) The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations.

"(c) The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006."

Session Laws 2006-109, s. 1, provides: "The Department of Health and Human Services shall examine the Community Alternatives Program for Disabled Adults (CAP/DA) in response to issues identified in the Medicaid Institutional Bias Study. The Department shall make an interim report of its findings to the North Carolina Study Commission on Aging on or before August 30, 2006, and shall submit its final report to the North Carolina Study Commission on Aging on or before August 30, 2007. The report shall include actions taken and planned by the Department in response to each bias identified in the study and shall include the following information:

"(1) Information on the utilization of CAP/DA slots, including a history of slots used per year over the last 10 years and the anticipated need during the next 10 years.

"(2) A description of the CAP/DA slot allocation formula; and a breakdown of slots by county, including the reallocation of any unused slots.

"(3) Strategies to ensure that the CAP/DA waiting list is managed as efficiently as possible, including consideration of whether there should be an expiration date tied to unused slots so that they may be reallocated in a timely manner to areas with waiting lists.

"(4) Implementation of a uniform screening/assessment tool and other strategies to ensure maximum operation efficiency and effectiveness for those individuals qualifying for CAP/DA services. This should include information on whether the lists should be prioritized by risk of institutionalization."

Session Laws 2006-110, s. 1, provides: "The Department of Health and Human Services shall collaborate with providers and advocates of home and community-based long-term care services to review the North Carolina Institutional Bias Study Report prepared by the

Lewin Group and make recommendations on ways to address the biases identified in the report. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging on or before October 15, 2006."

Session Laws 2007-355, ss. 1 and 2, provide that the Department of Health and Human Services, Division of Aging and Adult Services, shall work with the Division of Health Service Regulation, the Division of Medical Assistance, the Division of Public Health, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to study programs and services for older adults in Brunswick, Buncombe, Gaston, Henderson, Moore, and New Hanover Counties which currently have, or are projected by 2030 to have, the largest numbers of individuals age 60+ when compared to individuals age 17 and younger. The Division is to make an interim status report on the study to the North Carolina Study Commission on Aging on or before November 1, 2007, and is to make a final report of its findings and recommendations on or before April 1, 2008, to the 2008 Regular Session of the 2007 General Assembly, the North Carolina Study Commission on Aging, and to the board of county commissioners of each county studied. The Division is directed to make recommendations on the criteria that should be included and an appropriate funding level for a study to include all North Carolina counties, and is to report findings and recommendations to the North Carolina Study Commission on Aging on or before January 1, 2008.

Session Laws 2008-121, s. 1, provides: "The Department of Transportation shall study issues relating to the vehicular transportation of individuals seated in wheelchairs. The study shall include reviewing appropriate methods of transporting passengers who remain seated in wheelchairs while in motor vehicles and developing guidelines for the installation and use of wheelchair tie-down systems. The Department shall report its findings and any recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee not later than February 1, 2009."

Session Laws 2009-451, s. 10.62, provides: "Full implementation for the Community Alternatives Programs reimbursement system shall be not later than 12 months after the date on which the replacement Medicaid Management Information System becomes operational and stabilized."

For prior similar provisions, see Session Laws 2007-323, s. 10.44.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 120-181. Commission; duties.

The Commission shall study the issues of availability and accessibility of health, mental health, social, and other services needed by older adults. In making this study the Commission shall:

(1) Study the needs of older adults in North Carolina;

(2) Assess the current status of the adequacy and of the delivery of health, mental health, social, and other services to older adults;

(3) Collect current and long range data on the older adult population and disseminate this data on an ongoing basis to agencies and organizations that are concerned with the needs of older adults;

(4) Develop a comprehensive data base relating to older adults, which may be used to facilitate both short and long range agency planning for services for older adults and for delivery of these services;

(5) Document and review requests of federal, State, regional, and local governments for legislation or appropriations for services for older adults, and make recommendations after review;

(6) Evaluate long-term health care and its non-institutional alternatives;

(7) Propose a plan for the development and delivery of State services for older adults that, if implemented, would, over 10 years, result in a comprehensive, cost-effective system of services for older adults;

(8) Study all issues and aspects of gerontological concerns and problems, including but not limited to Alzheimer's Disease; and

(9) Carry out any other evaluations the Commission considers necessary to perform its mandate. (1987, c. 873, s. 13.1.)

§ 120-182. Commission; membership.

The Commission shall consist of 17 members, as follows:

(1) The Secretary of the Department of Health and Human Services or his, the Secretary's, delegate shall serve ex officio as a non-voting member;

(2) Eight shall be appointed by the Speaker of the House of Representatives, five being members of the House of Representatives at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults; and

(3) Eight shall be appointed by the President Pro Tempore of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults.

Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualifications. All initial appointments shall be made within one calendar month from the effective date of this Article [July 1, 1987]. Members' terms shall last for two years. Members may be appointed to a maximum of three consecutive terms and may be appointed again after having been off the Commission for two years. (1987, c. 873, s. 13.1; 1991, c. 739, s. 18; 1997-443, s. 11A.118(a); 2009-142, s. 1.)

Editor's Note. — This section was amended by Session Laws 2009-142, s. 1, in the coded bill drafting format provided by G.S. 120-20.1. In subdivision (1), the word "his" preceding "the secretary's delegate" was not struck through. Subdivision (1) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-142, s. 1, effective June 19, 2009, substituted "Members may be appointed to a maximum of three consecutive terms" for "Members may be reappointed for two consecutive terms" at the beginning of the last sentence of the last paragraph.

§ 120-183. Commission; meetings.

The Commission shall have its initial meeting no later than October 1, 1987, at the call of the President of the Senate and Speaker of the House. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint a cochairman each from the membership of the Commission. The Commission shall meet upon the call of the cochairmen. (1987, c. 873, s. 13.1; 1991, c. 739, s. 19.)

§ 120-184. Commission; reimbursement.

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5 and G.S. 138-6, as applicable. (1987, c. 873, s. 13.1.)

§ 120-185. Commission; public hearings.

The Commission may hold public meetings across the State to solicit public input with respect to the issues of aging in North Carolina. (1987, c. 873, s. 13.1.)

§ 120-186. Commission; authority.

The Commission has the authority to obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duties, pursuant to the provisions of G.S. 120-19, as if it were a committee of the General Assembly. The Commission shall also have the authority to call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairmen of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study. (1987, c. 873, s. 13.1.)

§ 120-186.1. Commission; Alzheimer's Subcommittee, Long-Term Care Subcommittee, and other subcommittees.

(a) The Commission cochairs shall appoint subcommittees as needed to assist with the completion of the work of the Commission. These subcommittees may include an Alzheimer's Subcommittee, a Long-Term Care Subcommittee, or other special subject subcommittees. The cochairs shall appoint as members of any subcommittee not more than four Commission members and at least four but no more than eight non-Commission members.

(b) The Commission cochairs shall prescribe the duties of any subcommittee created. Duties of the Alzheimer's Subcommittee may include conducting studies on the availability and efficacy of currently existing geriatric or memory disorder services and programs, advising the Commission on matters regarding Alzheimer's services and programs, and recommending to the Commission solutions to related problems. Duties of the Long-Term Care Subcommittee may include developing a long-term care policy for the State that has at least the following elements:

(1) Promotes elder independence, choice, and dignity;
(2) Provides a seamless, uniform system of flexible and responsive services;
(3) Provides single-entry access;
(4) Includes a wide range of home and community-based services available to all elderly who need them but targeted primarily to the most frail, needy elderly;
(5) Provides care and services at the least expense in the least confusing manner and based on the desires of the elder population and their families;
(6) Expands Medicaid income eligibility to allow more services in the home and community;
(7) Creates a single agency and budget stream to administer services to the elderly; and
(8) Approaches long-term care within the context of the entire health care system. (1989, c. 368, s. 1; 1995 (Reg. Sess., 1996), c. 583, s. 1; 1999-76, s. 1.)

§ 120-187. Commission; reports.

The Commission shall report to the General Assembly and the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening. (1987, c. 873, s. 13.1.)

§ 120-188. Commission; staff; meeting place.

The Commission may contract for clerical or professional staff or for any other services it may require in the course of its on-going study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1987, c. 873, s. 13.1.)

§§ 120-189 through 120-194: Reserved for future codification purposes.

Article 22.

The Public Health Study Commission.

§ 120-195. Commission created; purpose.

There is established the Public Health Study Commission. The Commission shall examine the public health system to determine its effectiveness and efficiency in assuring the delivery of public health services to the citizens of North Carolina. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-196. Commission duties.

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

(1) Determine whether the public health services currently available in each local health department conform to the mission and essential services established under G.S. 130A-1.1;

(2) Study the workforce needs of each local department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in local health departments;

(3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;

(4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities;

(5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose; and

(6) Study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current local health departments

should be organized into a network of larger multidistrict community administrative units. In making its recommendations on this study, the Commission shall consider whether the State should establish minimum populations for local health departments, and if so, shall recommend the number of and configuration for these multicounty administrative units and shall recommend a series of incentives to ease county transition into these new arrangements. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(a), (b); 1997-502, s. 11.)

Editor's Note. — Session Laws 2008-92, s. 1, provides: "The North Carolina Public Health Incubator Program, initially authorized in Section 10.32 of S.L. 2004-124, within the North Carolina Institute for Public Health shall report by October 1, 2008, and annually thereafter to the Public Health Study Commission on the following:

"(1) The status of its primary mission to support voluntary local health department collaborative efforts, in partnership with the Department of Health and Human Services, Division of Public Health, to address the State's regional health needs.

"(2) Its efforts to address urgent public health needs as identified in the 2008 final report of the Public Health Task Force's Public Health Improvement Plan."

§ 120-197. Commission membership; vacancies; terms.

(a) The Commission shall consist of 17 members, one of whom shall be the State Health Director. The Speaker of the House of Representatives shall appoint seven members, two of whom shall be selected from among the following: the UNC School of Public Health, the North Carolina Primary Care Association, the North Carolina Home Care Association, the North Carolina Pediatric Society, and the North Carolina Citizens for Public Health. Five of the Speaker's appointees shall be persons who are members of the House of Representatives at the time of their appointment, one of the five being the Representative who chairs the House standing committee related to health matters. The President Pro Tempore of the Senate shall appoint seven members, two of whom shall be selected from among the following: the North Carolina Health Directors' Association, the North Carolina Public Health Association, the Association of Public Health Nurses, the North Carolina Environmental Health Supervisors' Association, and the North Carolina Association of Public Health Educators. Five of the President Pro Tempore's appointees shall be persons who are members of the Senate at the time of their appointment, one of the five being the Senator who chairs the Senate standing committee related to health matters. The Governor shall appoint one member from either the North Carolina Medical Society or the North Carolina Hospital Association. The Lieutenant Governor shall appoint one member from either the North Carolina Association of County Commissioners or the Association of North Carolina Boards of Health.

(b) Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section. All initial appointments shall be made within one calendar month from the effective date of this Article.

(c) Legislative members appointed by the Speaker and the President Pro Tempore shall serve two-year terms. The public members initially appointed by the Speaker and the President Pro Tempore shall each serve a three-year term. The members initially appointed by the Governor and the Lieutenant Governor shall each serve a one-year term. Thereafter, the terms of all Commission members shall be for two years. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-198. Commission meetings.

The Commission shall have its first meeting not later than 60 days after the sine die adjournment of the 1993 General Assembly at the call of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Commission to serve as cochair. The Commission shall meet upon the call of the cochairs. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-199. Commission reimbursement.

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-200. Commission subcommittees; non-Commission membership.

The Commission cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties, and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-201. Commission authority.

The Commission may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The Commission also may call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairs of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-202. Commission reports.

The Commission shall report to the General Assembly, the Governor, and the Lieutenant Governor the results of its study and recommendations. The Commission shall submit its written report not later than 30 days after the convening of each biennial session of the General Assembly. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

§ 120-203. Commission staff; meeting place.

The Commission may contract for clerical and professional staff or for any other services it may require in the course of its ongoing study.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1993 (Reg. Sess., 1994), c. 771, ss. 2.1, 8.1; 1995, c. 358, s. 6; c. 437, s. 4; c. 467, s. 3; c. 507, s. 23A.6(b).)

Article 23.

The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services.

§§ 120-204 through 120-207: Repealed by Session Laws 2006-32, s. 2, effective June 29, 2006.

§§ 120-208 through 120-214: Reserved for future codification purposes.

Article 24.

The Legislative Study Commission on Children and Youth.

§ 120-215. Commission created; purpose.

There is created the Legislative Study Commission on Children and Youth. The purpose of the Commission is to study and evaluate the system of delivery of services to children and youth and to make recommendations to improve service delivery to meet present and future needs of the children and youth of this State. This study shall be a continuing one and the evaluation ongoing. (1997-390, s. 11.)

Comprehensive Treatment Services Program. — Session Laws 2007-323, ss. 10.10(a)-(h), (j), (k), provide: "(a) The Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. The Program shall be implemented by the Department in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary nonresidential and residential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide. The program shall include the following:

"(1) Behavioral health screening for all children at risk of institutionalization or other out-of-home placement.

"(2) Appropriate and medically necessary nonresidential and residential services for children within the child mental health deaf and hard of hearing target population.

"(3) Appropriate and medically necessary nonresidential and residential treatment services, including placements for sexually aggressive youth.

"(4) Appropriate and medically necessary nonresidential and residential treatment services, including placements for youth needing substance abuse treatment services and children with serious emotional disturbances.

"(5) Multidisciplinary case management services, as needed.

"(6) A system of utilization review specific to the nature and design of the Program.

"(7) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.

"(8) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.

"(9) Other appropriate components to accomplish the Program's purpose.

"(10) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.

"(11) A system of identifying and tracking children placed outside of the family unit in group homes, therapeutic foster care home settings, and other out-of-home placements.

"(12) The development of a strong infrastructure of interagency collaboration.

"(13) Individualized strengths-based care.

"(b) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

"(1) Provide only those treatment services that are medically necessary.

"(2) Implement utilization review of services provided.

"(3) Adopt the following guiding principles for the provision of services:

"a. Service delivery system must be outcome-oriented and evaluation-based.

"b. Services should be delivered as close as possible to the child's home.

"c. Services selected should be those that are most efficient in terms of cost and effectiveness.

"d. Services should not be provided solely for the convenience of the provider or the client.

"e. Families and consumers should be involved in decision making throughout treatment planning and delivery.

"f. Services shall be specified, delivered, and monitored through a unified Child and Family Plan incorporating the principles of one-child-one-team-one-plan.

"g. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community.

"(4) Implement all of the following cost-reduction strategies:

"a. Preauthorization for all services except emergency services.

"b. Levels of care to assist in the development of treatment plans.

"c. Clinically appropriate services.

"(c) The Department shall collaborate with other affected State agencies such as the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and with local departments of social services, area mental health programs, and local education agencies to eliminate cost shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

"(d) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department of Health and Human Services, the Department of Public Instruction, and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until the Memoranda of Agreement between local departments of social services, area mental health programs, local education agencies, the Administrative Office of the Courts, and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program, including provision for the immediate availability of student records to a local school administrative unit receiving a child placed in a residential setting outside the child's home county.

"(e) Notwithstanding any other provision of law to the contrary, services under the Comprehensive Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

"(f) Of the funds appropriated in this act for the Comprehensive Treatment Services Program, the Department of Health and Human Services shall establish a reserve of three percent (3%) to ensure availability of these funds to address specialized needs for children with unique or highly complex problems.

"(g) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected agencies, shall report on the following Program information:

"(1) The number and other demographic information of children served.

"(2) The amount and source of funds expended to implement the Program.

"(3) Information regarding the number of children screened, specific placement of children, including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.

"(4) The average length of stay in residential treatment, transition, and return to home.

"(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.

"(6) Recommendations on other areas of the Program that need to be improved.

"(7) Other information relevant to successful implementation of the Program.

"(h) The Department shall report on the following Program funding information:

"(1) The amount of Program funding allocated and expended by each LME.

"(2) The amount of Program funds each LME transferred out of the Program to serve purposes other than those outlined by this Program and an explanation of why LMEs transferred the funding.

"(3) Recommendations to improve the penetration rate of Program funds to serve the intended populations across the State.

"(j) Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Task Force. Professional staff shall be those assigned to subject areas or agencies involving child-serving programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and the Department of Public Instruction. Clerical staff shall be furnished to the Task Force through the offices of the House of Representatives and Senate Directors of Legislative Assistants.

"(k) The Department shall report on April 1, 2008, and April 1, 2009, on the implementation of subsections (a) through (h) of this section. The reports required under this subsection shall be made to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division."

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-208 and was codified as this section at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-126, s. 1(a) and (b), provides: "(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2009-2010 Work Plan for the Program Evaluation Division of the General Assembly a study of existing programs that directly or indirectly benefit children and youth in this State. The Division shall identify the programs and their sources of funding and determine whether the programs have clear goals, indicators, or benchmarks by which to measure the programs' success.

"(b) The Program Evaluation Division shall submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Study Commission on Children and Youth, and the Fiscal Research Division at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee."

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 459.

§ 120-216. Commission duties.

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:
  a. Determining the adequacy and appropriateness of services:
    1. To children and youth receiving child welfare services;
    2. To children and youth in the juvenile court system;
    3. Provided by the Division of Social Services and the Department of Juvenile Justice and Delinquency Prevention;
    4. To children and youth served by the Mental Health, Developmental Disabilities, and Substance Abuse Services system.
  b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court

system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose. (1997-390, s. 11; 1997-443, s. 11A.118(b); 1999-423, s. 5; 2000-137, s. 4(u); 2007-323, s. 10.10(i).)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-209 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-217. Commission membership; terms; compensation.

(a) The Commission shall consist of 26 members, as follows:

(1) Eleven members appointed by the Speaker of the House of Representatives, among them:

a. Five shall be members of the House of Representatives at the time of their appointment, of whom at least one shall also serve on the House of Representatives Appropriations Subcommittee on Health and Human Services, one of whom also serves on the Joint Legislative Education Oversight Committee, one of whom also serves on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom also serves on the House of Representatives Appropriations Subcommittee on Justice and Public Safety,

b. One shall be the director of a local health department,

c. One shall be the director of a county department of social services,

d. One shall be the parent of a child who is at risk for behavioral, social, health, or safety problems or academic failure,

e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth,

f. One shall be a chief district court judge recommended by the Council of Chief District Judges, and

g. One shall be a representative from the Covenant with North Carolina Children.

(2) Eleven members appointed by the President Pro Tempore of the Senate, as follows:

a. Five shall be members of the Senate at the time of their appointment, of whom at least one shall also serve on the Senate

Appropriations Committee on Health and Human Services, at least one of whom shall also serve on the Joint Legislative Education Oversight Committee, at least one of whom shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one of whom also serves on the Senate Appropriations Committee on Justice and Public Safety,

b. One shall be the director of a mental health area authority,

c. One shall be a representative of the Association of County Commissioners,

d. One shall be a representative of a local board of education,

e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect,

f. One shall be a chief district court judge recommended by the Council of Chief District Judges,

g. One shall be a representative from Action for Children of North Carolina, and

h. One shall be a representative from the North Carolina Child Fatality Task Force.

(3) The following shall serve ex officio as nonvoting members of the Commission:

a. The Secretary of Health and Human Services, or the Secretary's designee,

b. The State Superintendent of Public Instruction, or the Superintendent's designee,

c. The Secretary of Administration, or the Secretary's designee, and

d. The Director of the Administrative Office of the Courts, or the Director's designee.

(b) Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualification. Members' terms shall last for two years. Members may be appointed to a maximum of three consecutive terms and may be appointed again after having been off the Commission for two years.

(c) Commission members shall receive no salary as a result of serving on the Commission and the Task Force on the Coordination of Children's Services but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable. (1997-390, s. 11; 1997-443, ss. 11A-120, 11A-121, 11A-122; 1997-483, s. 3.1; 2007-323, s. 10.10(i); 2009-142, s. 2.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-210 and was codified as this section at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-142, s. 2, effective June 19, 2009, substituted "Members may be appointed to a maximum of three consecutive terms" for "Members may be reappointed for two consecutive terms" in the last sentence of subsection (b).

§ 120-218. Commission meetings; public hearings; staff.

(a) The Commission shall hold its initial meeting at the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Subsequent meetings shall be held upon the call of the Commission cochairs. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall appoint a cochair each from the membership of the Commission.

(b) The Commission may hold public hearings across the State to solicit public input with respect to issues relating to children and youth.

(c) The Commission may contract for clerical or professional staff or for any other services it may require in the course of its ongoing study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate. The Commission and the Task Force on the Coordination of Children's Services may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1997-390, s. 11; 2007-323, s. 10.10(i).)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-211 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-219. Commission reports.

The Commission shall report to the General Assembly and to the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening. (1997-390, s. 11.)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-212 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-220. Commission authority.

The Commission and the Task Force on the Coordination of Children's Services has the authority to obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, pursuant to G.S. 120-19, as if it were a committee of the General Assembly. (1997-390, s. 11; 2007-323, s. 10.10(i).)

Editor's Note. — This section was enacted by Session Laws 1997-390, s. 11 as G.S. 120-213 and was codified as this section at the direction of the Revisor of Statutes.

§ 120-221. Task Force on the Coordination of Children's Services.

(a) There is created the Task Force on the Coordination of Children's Services, which shall be a Task Force of the Commission. The following members of the Commission shall serve on the Task Force:

(1) Five of the Commission members appointed by the Speaker of the House of Representatives, as follows:
  a. The Commission member who serves on the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Commission member who is a member of the House of Representatives and who also serves on the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services,
  b. The Commission member who is a local health director,
  c. The Commission member who is the parent of a child at risk for behavioral, social, health, or safety problems or academic failure, and
  d. The Commission member who is the director of a county department of social services.

(2) Five of the Commission members appointed by the President Pro Tempore of the Senate, as follows:

a. The Commission member who is a member of the Senate and serves on the Joint Legislative Education Oversight Committee, and the Commission member who serves on the Senate Appropriations Committee on Justice and Public Safety,
b. The Commission member who represents a local board of education,
c. The Commission member who is a representative of Action for Children of North Carolina, and
d. The Commission member who is the director of an area authority or county program.

(3) One designee of each of the following ex officio Commission members:
a. The Secretary of Health and Human Services,
b. The Superintendent of Public Instruction, and
c. The Secretary of Administration.

(4) Each cochair of the Commission shall appoint one of the Task Force members as cochair of the Task Force.

(b) The purpose of the Task Force is to study and recommend changes to the Commission, the Governor, and the General Assembly to improve collaboration and coordination among agencies that provide services to children, youth, and families with multiple service needs. Task Force recommendations shall include mechanisms for establishing clear State leadership, consistent policy direction, and increased accountability at the State and local levels. As part of its work, the Task Force shall:

(1) Identify existing State, regional, and local collaborative bodies (including their charges, scopes of authority, and accountability requirements) that have been created by legislation, administrative rule, or agency policy and that are charged with serving, protecting, or improving the well-being of North Carolina's children, youth, and families. Once it has identified the collaborative bodies, the Task Force shall consider how they could be consolidated, reorganized, or eliminated in order to improve their effectiveness and accountability, increase the likelihood that key players will actively participate, and reduce unnecessary duplication of effort. The Task Force shall also consider the creation of a mechanism for coordination and communication among the State and local collaborative bodies, incentives for collaboration, clarification of roles among agencies, and ways to monitor the extent to which groups are collaborating.

(2) Study the practices of agencies currently implementing a system of care platform of practices and make recommendations regarding whether to adopt those practices statewide and across child-serving agencies as the preferred mechanism for providing services to children, youth, and families. In examining this issue, the Task Force shall identify those State and local agencies that are currently implementing practices that are consistent with a system of care, those states that have implemented a system of care as a statewide policy initiative, and the extent to which a system of care is cost-effective.

(3) The Task Force shall also examine the following principles that are associated with a system of care and determine whether to recommend the adoption of a State policy that reflects these principles:
a. Services for children should promote success, safety, and permanence.
b. Services should be child- and family-centered, giving priority to keeping children with their families, in their home, school, and community.
c. Services should actively promote early identification and intervention.

d. Services should be designed to protect the rights of children.
e. Services shall be integrated and comprehensive, addressing the child's physical, educational, social, and emotional needs through a single child and family team.
f. Services shall be outcomes-accountable and tied to a unified child and family plan.
g. Agency resources and services shall be shared and coordinated.
h. Services shall be provided as close to home as appropriate in the least restrictive setting consistent with what is known to be effective.
i. Services shall be culturally competent.
j. Services shall address the unique strengths, needs, and potential of each child and family, and shall be sufficiently flexible to meet highly individualized child and family needs.
k. Management of the child-serving system is a responsibility shared among all public and private child-serving agencies that should be held collectively accountable for outcomes.

(4) In reviewing principles relating to a system of care, the Task Force shall determine whether they articulate goals that are measurable and if not, determine whether they could be modified to reflect measurable goals.

(5) Study any other issues the Task Force determines would improve coordination and collaboration among child-serving agencies.

(c) The Task Force shall report at least annually to the Commission or more frequently at the request of the cochairs of the Commission, and shall also report on April 1 of each year to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. (2007-323, s. 10.10(i).)

Editor's Note. — Session Laws 2007-323, s. 32.6, made this section effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

§§ 120-222 through 120-224: Reserved for future codification purposes.

ARTICLE 25.

Joint Legislative Public Assistance Commission.

§ 120-225: Repealed by Session Laws 2001-424, s. 21.13(a), effective July 1, 2001.

ARTICLE 25A.

Legislative Commission on Methamphetamine Abuse.

§ 120-226. Commission established; purpose; reports.

(a) Establishment. — The Legislative Commission on Methamphetamine Abuse is established.

(b) Purpose. — The purpose of the Commission is to study: (i) issues regarding the abuse of methamphetamine precursors used to make methamphetamine and any other issues that are relevant to that topic; (ii) the cost, feasibility, and advisability of developing and implementing data-tracking mechanisms related to the sale of pseudoephedrine products; (iii) development of programs to curb the use of and access to methamphetamine in North Carolina; (iv) development of training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale; (v) development of programs to educate the citizens of the State on the issues of detection and prevention of clandestine methamphetamine laboratories in the State and to educate the citizens of the State of the restrictions on the sale of pseudoephedrine products set forth in Article 5D of Chapter 90 of the General Statutes.

(c) Membership. — The Commission shall consist of 22 members to be appointed as follows:

(1) (1) Two members of the Senate appointed by the President Pro Tempore of the Senate.
(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
(3) (3) The Attorney General or the Attorney General's designee.
(4) The Governor or the Governor's designee.
(5) One representative from the North Carolina Association of County Directors of Social Services, as appointed by the President Pro Tempore of the Senate.
(6) One representative from the North Carolina Retail Merchants Association, as appointed by the Speaker of the House of Representatives.
(7) One representative from the North Carolina Association of Community Pharmacists, as appointed by the President Pro Tempore of the Senate.
(8) One representative from the Conference of District Attorneys of North Carolina, as appointed by the Speaker of the House of Representatives.
(9) One representative from the Consumer Healthcare Products Association, as appointed by the President Pro Tempore of the Senate.
(10) One representative from the North Carolina Sheriffs' Association, Inc., as appointed by the Speaker of the House of Representatives.
(11) The Secretary of Health and Human Services or the Secretary's designee.
(12) The Director of the State Bureau of Investigation or the Director's designee.
(13) One representative from the North Carolina Narcotic Enforcement Officers' Association, as appointed by the President Pro Tempore of the Senate.
(14) One representative from the North Carolina Association of Chiefs of Police, as appointed by the Speaker of the House of Representatives.
(15) The Commissioner of Agriculture or the Commissioner's designee.
(16) The Chair of the Commission on Mental Health or the Chair's designee.
(17) The Director of the National Drug Intelligence Center or the Director's designee.
(18) The Administrator of the United States Drug Enforcement or the Administrator's designee.
(19) One representative from the National Association of Chain Drug Stores, as appointed by the President Pro Tempore of the Senate.
(20) One representative from a child advocacy organization in the State, as appointed by the Speaker of the House of Representatives.

(d) Terms. — Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The President Pro Tempore of the Senate shall initially appoint three members for a term of two years and four members for a term of three years.

(2) The Speaker of the House of Representatives shall initially appoint three members for a term of two years and four members for a term of three years.

Initial terms shall commence on September 1, 2005.

(e) Cochairs. — The Commission shall have two Cochairs, one senator designated by the President Pro Tempore of the Senate and one representative designated by the Speaker of the House of Representatives from among their respective appointees. The initial terms shall commence on September 1, 2005.

(f) Vacancies. — A vacancy on the Commission shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Meetings. — The Cochairs shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(i) Quorum. — A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(j) Staff. — Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

(k) Reports. — The Commission shall annually report on its activities and recommendations, including any legislative proposals, to the General Assembly. The Commission shall make its first report on or before November 1, 2005.

(*l*) Funding. — From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this section. (2005-434, s. 7.)

Cross References. — For Study and report on use of pseudoephedrine products to make methamphetamine, see G.S. 114-19.01.

Editor's Note. — The number of this section was designated at the direction of the Revisor of Statutes.

§§ 120-227 through 120-229: Reserved for future codification purposes.

ARTICLE 26.

Joint Legislative Oversight Committee on Information Technology.

§ 120-230. Creation and purpose of the Joint Legislative Oversight Committee on Information Technology.

There is established the Joint Legislative Oversight Committee on Information Technology. The Committee shall review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The goals and objectives of the Committee shall be to develop electronic commerce in the State and to coordinate the use of information technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. The Committee shall examine, on a continuing basis, systemwide issues affecting State government information technology, including, but not limited to, State information technology operations, infrastructure, development, financing, administration, and service delivery. The Committee may examine State agency or enterprise-specific information technology issues. The Committee shall make ongoing recommendations to the General Assembly on ways to improve the effectiveness, efficiency, and quality of State government information technology. (1999-237, s. 22(a); 2004-129, s. 7A(b).)

§ 120-231. Committee duties; reports.

(a) The Joint Legislative Oversight Committee on Information Technology may:

(1) Evaluate the current technological infrastructure of State government and information systems use and needs in State government and determine potential demands for additional information staff, equipment, software, data communications, and consulting services in State government during the next 10 years. The evaluation may include an assessment of ways technological infrastructure and information systems use may be leveraged to improve State efficiency and services to the citizens of the State, including an enterprise-wide infrastructure and data architecture.

(2) Evaluate information technology governance, policy, and management practices, including policies and practices related to personnel and acquisition issues, on both a statewide and project level.

(3) Study, evaluate, and recommend changes to the North Carolina General Statutes relating to electronic commerce.

(4) Study, evaluate, and recommend action regarding reports received by the Committee.

(5) Study, evaluate, and recommend any changes proposed for future development of the information highway system of the State.

(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

(c) The Committee shall submit annual reports to the General Assembly on or before the convening of the regular session of the General Assembly each year. The Committee may submit interim reports at any time it deems appropriate. (1999-237, s. 22(a); 2004-129, ss. 7A(c), 36; 2006-264, s. 10.)

Editor's Note. — Session Laws 2004-129, ss. 7A(c) and 36 both amended subsection (b) in the coded bill drafting format provided by G.S. 120-20.1. The amendment by 2004-129, s. 36 failed to incorporate the changes made by 2004-129. s. 7A(c). The section is set out in the form above at the direction of the Revisor of Statutes.

§ 120-232. Committee membership; terms; organization; vacancies.

(a) The Committee shall consist of 16 members as follows:

(1) Eight members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. At least two appointees shall be members of the Senate Appropriations Committee.

(2) Eight members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives. At least two appointees shall be members of the House of Representatives Appropriations Committee.

(3), (4) Repealed by Session Laws 2004-129, s. 7A(d), effective July 1, 2004.

(b) Members of the Committee shall serve terms of two years beginning at the convening of the General Assembly in each odd-numbered year, with no prohibition against being reappointed, except initial appointments shall begin on appointment and end on the day of convening of the 2005 General Assembly.

(c) Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected, but resignation or removal from service constitutes resignation or removal from service on the Committee.

(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each select a legislative member from their appointees to serve as cochair of the Committee.

(e) The Committee shall meet at least once a quarter and may meet at other times upon the call of the cochairs. A majority of the members of the Committee shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Committee shall be necessary for action to be taken by the Committee.

(f) All members shall serve at the will of their appointing officer. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1999-237, s. 22(a); 2001-486, s. 2.7; 2004-129, s. 7A(d).)

§ 120-233. Assistance; per diem; subsistence; and travel allowances.

(a) The Committee may contract for consulting services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Committee. The professional staff shall include the appropriate staff from the Fiscal Research, Research, Legislative Drafting, and Information Systems Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the Committee through the offices of the Senate and the House of Representatives Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Committee. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Members of the Committee shall receive per diem, subsistence, and travel allowances as follows:

(1) Committee members who are members of the General Assembly, at the rate established in G.S. 120-3.1.

(2) Committee members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6.

(3) All other Committee members, at the rate established in G.S. 138-5. (1999-237, s. 22(a).)

§ 120-234. Committee authority.

The Committee may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S.

120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a committee of the General Assembly. Any cost of providing information to the Committee not covered by G.S. 120-19.3 may be reimbursed by the Committee from funds appropriated to it for its continuing study. (1999-237, s. 22(a).)

§ 120-235. Committee subcommittees; noncommittee membership.

The Committee cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties, and may appoint noncommittee members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. (1999-237, s. 22(a).)

§§ 120-236 through 120-239: Reserved for future codification purposes.

Article 27.

The Joint Legislative Oversight Committee On Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 120-240. Creation and membership of Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(a) Establishment; Definition. — There is established the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Membership. — The Committee shall consist of 16 members, as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, as follows:
  a. At least two members of the Senate Committee on Appropriations.
  b. The chair of the Senate Appropriations Committee on Human Resources.
  c. At least two members of the minority party.

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, as follows:
  a. At least two members of the House of Representatives Committee on Appropriations.
  b. The cochairs of the House of Representatives Appropriations Subcommittee on Health and Human Services.
  c. At least two members of the minority party.

(c) Terms. — Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2001 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2000-83, s. 2.)

Editor's Note. — Session Laws 2000-83, s. 1, provides:

"Findings. — The General Assembly finds that:

"(1) The State and local government entities are not using effectively and efficiently available resources to administer and provide mental health, developmental disabilities, and substance abuse services uniformly across the State.

"(2) Effective implementation of State policy to assist individuals with mental illness, developmental disabilities, and substance abuse problems requires that a standard system of services, designed to identify, assess, and meet client needs within available resources, be available in all regions of the State.

"(3) The findings of recent comprehensive independent studies, and recent federal court decisions, compel the State to consider significant changes in the operation and utilization of State psychiatric hospital services.

"(4) State and local government funds for mental health, developmental disabilities, and substance abuse services must be committed on a continuing, stabilized basis and will need to be increased over time to ensure that the purposes of mental health system reform are achieved.

"(5) Reform of the State mental health, developmental disabilities, and substance abuse services system is necessary and should begin immediately. Reform efforts should focus on correcting system inefficiencies, inequities in service availability, and deficiencies in funding and accountability, and on improving and enhancing services to North Carolina's citizens."

Session Laws 2006-32, s. 3, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the following issues and report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly:

"(1) Mechanisms to allow area authorities and county programs to purchase bed days from the State psychiatric hospitals. The LOC shall consider options for holding area authorities and county programs accountable for their use of State psychiatric institutions, provide incentives to increase community capacity, and options for ensuring the State institutions have a sufficient funding stream to ensure quality care to patients and a stable and well-qualified workforce.

"(2) Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the mental health, developmental disabilities, and substance abuse system. As part of the study, the LOC shall examine the impact of the waiver on Piedmont Behavioral Health's ability to implement its management functions including utilization management for Medicaid services, consumer satisfaction, provider monitoring, use of best practices, and any other matters the LOC determines are relevant. If the LOC determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it shall also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.

"(3) Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories."

Session Laws 2006-32, s. 4, as amended by Session Laws 2006-187, s. 8, and as amended by Session Laws 2006-259, s. 44(a), provides: "The Legislative Research Commission shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

"(1) Funding mechanisms;

"(2) Target populations;

"(3) Interagency collaboration at the State and local levels; and

"(4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

"The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

§ 120-241. Purpose of Committee.

The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall examine, on a continuing basis, systemwide issues affecting the development, financing, administration, and delivery of mental health, developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of services delivered. The Committee shall make ongoing recommendations to the General Assembly on ways to improve the quality and delivery of services and to maintain a high level of effectiveness and efficiency in system administration at the State and local levels. In conducting its examination, the Committee shall study the budget, programs, administrative organization, and policies of the Department of Health and Human Services to determine ways in which the General Assembly may encourage improvement in mental health, developmental disabilities, and substance abuse services provided to North Carolinians. (2000-83, s. 2.)

§ 120-242. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is eight members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2000-83, s. 2.)

§ 120-243. Reports to Committee.

Whenever the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, is required by law to report to the General Assembly or to any of its permanent committees or subcommittees on matters affecting mental health, developmental disabilities, and substance abuse services, the Department shall transmit a copy of the report to the cochairs of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. (2003-58, s. 4.)

§ 120-244. Committee authority.

The Committee may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a committee of the General Assembly. Any cost of providing information to the Committee not covered by G.S. 120-19.3 may be reimbursed by the Committee from funds appropriated to it for its continuing study. (2006-32, s. 1.)

Editor's Note. — Session Laws 2006-32, s. 5, made this section effective June 29, 2006.

ARTICLE 28.

Future of the North Carolina Railroad Study Commission.

§ 120-245. Commission Established.

There is established the Future of the North Carolina Railroad Study Commission. (1999-237, s. 27.25(a).)

Editor's Note. — Session Laws 1999-237, s. 27.25 (a)-(k) has been codified as Chapter 120, Article 28, G.S. 120-245 through 120-255, at the direction of the Revisor of Statutes.

§ 120-246. Membership.

The Commission shall be composed of 18 members as follows:

(1) Nine members of the House of Representatives appointed by the Speaker of the House.

(2) Nine members of the Senate appointed by the President Pro Tempore of the Senate.

Terms on the Commission are for two years and begin on January 15 of each odd-numbered year, except for the terms of the initial members, which begin on appointment. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. (1999-237, s. 27.25(b); 2000-138, s. 8.1; 2001-486, s. 2.8.)

§ 120-247. Duties of the Commission.

The Commission shall study the following matters:

(1) The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

(3) Methods to expedite property disputes between railroads and private landowners.

(4) All aspects of the operation, structure, management, and long-range plans of the North Carolina Railroad.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company. (1999-237, s. 27.25(c); 2000-138, s. 8.2; 2000-146, s. 12.)

Editor's Note. — Session Laws 2000-146, s. 12, effective on and after July 1, 1999, amended Session Laws 1999-237, s. 27.25(c), by rewriting subdivision (1). Session Laws 2000-146, s. 12, was repealed by Session Laws 2000-138, s. 8.2(a), effective July 1, 2000; s. 8.2(b) of Session Laws 2000-138 rewrote subdivision (1), making the same changes as had been made by Session Laws 2000-146, s. 12.

§ 120-248. Vacancies.

Any vacancy on the Commission shall be filled by the appointing authority. (1999-237, s. 27.25(d).)

§ 120-249. Cochairs.

Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. (1999-237, s. 27.25(e).)

§ 120-250. Quorum.

A quorum of the Commission shall be nine members. (1999-237, s. 27.25(f).)

§ 120-251. Expenses of Members.

Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. (1999-237, s. 27.25(g).)

§ 120-252. Staff.

Adequate staff shall be provided to the Commission by the Legislative Services Office. (1999-237, s. 27.25(h).)

§ 120-253. Consultants.

The Commission may hire consultants to assist with the study. Before expending any funds for a consultant, the Commission shall report to the Joint Legislative Commission on Governmental Operations on the consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components. (1999-237, s. 27.25(i).)

§ 120-254. Meeting Location.

The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building. (1999-237, s. 27.25(j).)

§ 120-255. Reports.

The Commission shall submit an annual report to the General Assembly on or before the convening of the regular session of the General Assembly each year. (1999-237, s. 27.25(k); 2000-138, s. 8.3; 2000-146, s. 13.)

Editor's Note. — Session Laws 2000-146, s. 13, effective on and after July 1, 1999, amended Session Laws 1999-237, s. 27.25(k), by requiring the Commission to submit a final report to the General Assembly by January 15, 2001. Session Laws 2000-146, s. 13, was repealed by Session Laws 2000-138, s. 8.3(a), effective July 1, 2000.

§§ 120-256, 120-257: Reserved for future codification purposes.

Article 29.

Joint Legislative Oversight Committee on Capital Improvements.

§ 120-258. Committee created.

There is established the Joint Legislative Oversight Committee on Capital Improvements. The Committee consists of 16 members as follows:

(1) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2002-126, s. 29.3.)

Study — Improvement of Energy and Water Conservation in State-Owned Facilities. — Session Laws 2006-206, ss. 4.1, 4.2, provide: "In an effort to improve energy and water conservation by State departments, agencies, and institutions, the Joint Legislative Oversight Committee on Capital Improvements shall study the following:

"(1) The role of repair and renovation investments and related costs in reducing energy and water use in existing State-owned facilities by twenty percent (20%) by January 1, 2012.

"(2) The construction and design of new facilities, facility additions, and facility renovations with the goal of reducing energy and water use by twenty percent (20%) by January 1, 2012.

"(3) The State's method of funding and planning capital projects to improve the integration of long-term operating costs, such as energy and water use, into the design of State facilities.

"(4) The State's method of funding utility costs for State facilities and whether this method of funding creates adequate incentives for State departments, agencies, and institutions to reduce energy and water use, thereby reducing the State's utility costs.

"(5) The costs and benefits of constructing green buildings, Leadership in Energy and Environmental Design (LEED) certified buildings, building commissioning, and other design and construction techniques when constructing new State-owned facilities, facility additions, and facility renovations.

"(6) The relationship of guaranteed energy savings contracts to the State's investment in State-owned capital facilities.

"(7) Any other issue the Committee determines is pertinent to the reduction of energy and water use in State-owned facilities.

"No later than February 1, 2007, the Joint Legislative Oversight Committee on Capital Improvements shall submit a report, including any recommendations or legislative proposals, to the 2007 General Assembly."

§ 120-259. Purpose and powers of the Committee.

(a) The Joint Legislative Oversight Committee on Capital Improvements shall examine, on a continuing basis, capital improvements approved and undertaken for State facilities and institutions. As used in this section "capital improvements" includes repairs and renovations, and "State facilities and institutions" includes facilities and institutions of The University of North Carolina.

(b) The Committee shall have oversight over implementation of the six-year capital improvements plan developed pursuant to G.S. 143C-8-5.

(c) The Committee, while in discharge of official duties, shall have access to any paper or document and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

(d) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2002-126, s. 29.3; 2006-203, s. 63.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before July 1, 2007 are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 63, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "six-year capital improvements plan developed pursuant to G.S. 143C-8-5" for "Capital Improvements Planning Act established under Article 1B of Chapter 143 of the General Statutes and shall consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45" in subsection (b).

§ 120-260. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Oversight Committee on Capital Improvements. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2002-126, s. 29.3.)

§§ 120-261 through 120-264: Reserved for future codification purposes.

Article 30.

Joint Legislative Committee on Domestic Violence.

§ 120-265. Creation and membership of Joint Legislative Committee on Domestic Violence.

The Joint Legislative Committee on Domestic Violence is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2007 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (2005-356, s. 1.)

Editor's Note. — Session Laws 2005-356, s. 2, provides: "The Administrative Office of the Courts, in consultation with the Department of Correction, Division of Community Corrections, shall study and review programs in this State, and other states, that utilize Global Positioning Satellite (GPS) technology to track criminal offenders. Based upon the study and review, the Administrative Office of the Courts shall make written recommendations to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than July 1, 2006, for a pilot GPS program as a condition for pretrial release pursuant to G.S. 15A-534.1. The recommendations shall include whether the alleged victim of the charged offense should have a receiver for immediate and direct notification of a GPS tracking violation by the defendant."

Session Laws 2005-356, s. 3, provides: "The Department of Correction, Division of Community Corrections, shall make a written report no later than January 1, 2007, to the Joint Legislative Committee on Domestic Violence and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on measures the Division is undertaking to address the issue of supervising domestic violence offenders."

Session Laws 2005-356, s. 4, provides: "The Administrative Office of the Courts shall expand the Family Court Model to additional jurisdictions of the State, as resources allow, shall study the elements of the model that might be adopted without additional funding, and implement those elements in jurisdictions where possible. The Administrative Office of the Courts shall also study the automation of court records to allow queries on civil, criminal, and juvenile matters.

"The Administrative Office of the Courts shall report to the Joint Legislative Committee on Domestic Violence and the North Carolina Courts Commission no later than January 1, 2007, on the results of the studies, the recommendations of the Administrative Office of the Courts, and any steps requiring legislative action to implement the recommendations."

§ 120-266. Purposes and powers of Committee.

(a) The Joint Legislative Committee on Domestic Violence shall examine, on a continuing basis, domestic violence issues in North Carolina in order to make ongoing recommendations to the General Assembly on ways to reduce incidences of domestic violence and to provide additional assistance to victims of domestic violence. In this examination, the Committee shall:

(1) Study the budget, programs, and policies of the Domestic Violence Commission to determine ways in which the General Assembly may improve the effectiveness of the Commission;

(2) Study and evaluate the funding sources and needs of domestic violence programs providing services to domestic violence victims and programs providing treatment to domestic violence abusers;

(3) Study legal services funding for domestic violence victims and explore additional sources of funding;

(4) Explore sources of additional funding for all domestic violence programs, including visitation centers;

(5) Examine current programs and explore new programs to provide effective services to domestic violence victims and treatment to domestic violence abusers;

(6) Examine law enforcement and judicial responses to domestic violence;
(7) Review data collected on domestic violence cases pursuant to G.S. 15A-1382.1;
(8) Study the effectiveness of the Crime Victims Rights Act as it relates to domestic violence; and
(9) Conduct any other studies, evaluations, or assessments necessary for the Committee to carry out its purpose.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2005-356, s. 1.)

§ 120-267. Organization of the Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Committee on Domestic Violence. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(d) The Committee cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting member of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. (2005-356, s. 1.)

§§ 120-268, 120-269: Reserved for future codification purposes.

ARTICLE 31.

Miscellaneous.

§ 120-270. Report by State agencies to the General Assembly on ways to reduce incidence of identity theft.

Agencies of the State shall evaluate and report annually by January 1 to the General Assembly about the agency's efforts to reduce the dissemination of personal identifying information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public forms, the use of random personal identification numbers, restriction of access to personal identifying information, and reduction of use of personal identifying information when it is not necessary. Special attention shall be given to the use, collection, and dissemination of social security numbers. If the collection of a social security number is found to be unwarranted, the State agency shall immediately discontinue the collection of social security numbers for that purpose. (2005-414, s. 5.)

Editor's Note. — Session Laws 2005-414 s. 5, enacted this Article as Article 30; it was renumbered Article 31 at the direction of the Revisor of Statutes.

Session Laws 2005-414, s. 5, enacted this section as G.S. 120-61; it was renumbered as G.S. 120-270 at the direction of the Revisor of Statutes.

§ 120-271. Use of likenesses of any seal or coat of arms of the Senate.

(a) Whoever, except as directed by the Senate or the Principal Clerk of the Senate on its behalf, knowingly uses, manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of any seal or coat of arms of the Senate, or any substantial part thereof, except for manufacture or sale of the article for the official use of the State of North Carolina, shall be guilty of a Class 2 misdemeanor.

(b) A violation of this section may be enjoined at the suit of the Attorney General. (2007-354, s. 1.)

Editor's Note. — Session Laws 2007-354, s. 2, made this section effective August 17, 2007.

§§ 120-272 through 120-274: Reserved for future codification purposes.

ARTICLE 32.

Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

(Effective until June 30, 2015)

§ 120-275. (Effective until June 30, 2015) Commission established.

There is established the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this Article as Article 30 of Chapter 120 and this section as G.S. 120-270; they were recodified as Article 32 of Chapter 120 and G.S. 120-275, respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-261, s. 7, makes this Article effective August 27, 2006, and provides that it expires on June 30, 2015.

Session Laws 2006-261, s. 6, contains a severability clause.

§ 120-276. (Effective until June 30, 2015) Membership; terms.

(a) Membership. — The Commission shall be composed of 12 members as follows:

(1) Five members of the House of Representatives appointed by the Speaker of the House.

(2) Five members of the Senate appointed by the President Pro Tempore of the Senate.

(3) The Senate and House cochairs of the Joint Legislative Transportation Oversight Committee, or their designees, shall serve as ex officio members.

(b) Terms. — Members of the Commission shall serve two-year terms, beginning July 1 of each odd-numbered year. Members shall serve at the pleasure of the appointing authority. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from the Commission.

(c) Vacancies. — Vacancies on the Commission shall be filled by the appointing authority. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-271; it was recodified as G.S. 120-276 at the direction of the Revisor of Statutes.

§ 120-277. (Effective until June 30, 2015) Duties of the Commission.

The Commission shall:

(1) Monitor the implementation, and assess and evaluate the effectiveness, of the Department of Transportation program under G.S. 136-28.4.

(2) Review the strategies the Department of Transportation plans to use to implement the requirements of G.S. 136-28.4.

(3) Develop recommendations for submittal to the Department of Transportation or the General Assembly to improve the program under G.S. 136-28.4. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-271; it was recodified as G.S. 120-277 at the direction of the Revisor of Statutes.

§ 120-278. (Effective until June 30, 2015) Department of Transportation reporting.

The Department of Transportation shall report quarterly to the Commission on the status of the program under G.S. 136-28.4 and efforts made to achieve the goals of the program. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-272; it was recodified as G.S. 120-278 at the direction of the Revisor of Statutes.

§ 120-279. (Effective until June 30, 2015) Organization of Commission.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative

Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. The Commission shall meet upon the joint call of the cochairs.

(b) A quorum of the Commission is seven members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Commission has the powers of a joint commission under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-273; it was recodified as G.S. 120-279 at the direction of the Revisor of Statutes.

Commission and the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. The Commission shall meet upon the joint call of the cochairs.

(b) A quorum of the Commission is seven members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Commission has the powers of a joint commission under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission. (2006-261, s. 5.)

Editor's Note. — Session Laws 2006-261, s. 5, enacted this section as G.S. 120-279.1; it was recodified as G.S. 120-279 at the direction of the Revisor of Statutes.

Chapter 120C.

Lobbying.

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ARTICLE 1.

General Provisions.

§§ 120C-1 through 120C-99: Reserved for future codification purposes.

§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

(1) Commission. — The State Ethics Commission under Chapter 138A of the General Statutes.

(2) Designated individual. — A legislator, legislative employee, or public servant.

(3) Executive action. — The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:

a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.

b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:

1. Applying for a permit, license, determination of eligibility, or certification.
2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
4. Ratemaking.

c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).

d. Ministerial functions.

e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.

(4) In session. — One of the following:

a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:

1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.

b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:

1. Adjourns sine die.
2. Recesses or adjourns for more than 10 days.

(5) Legislative action. — The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.

(6) Legislative employee. — Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Ser-

vices Commission, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages.

(7) Legislator. — As defined in G.S. 138A-3 and G.S. 120C-104.

(8) Liaison personnel. — Any State employee, counsel employed under G.S. 147-17, or officer whose principal duties, in practice or as set forth in that individual's job description, include lobbying legislators or legislative employees.

(9) Lobbying. — Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(10) Lobbyist. — An individual who engages in lobbying and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental unit, and receives payment for services. For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.

c. Contracts for economic consideration for the purpose of lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(11) Lobbyist principal and principal. — The person or governmental unit on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

(11a) through (11j) Reserved for future codification purposes.

(11k) Payment for services. — Any money, thing of value, or economic benefit paid to a lobbyist for the purpose of lobbying other than reimbursement of actual travel, administrative expenses, or subsistence.

(12) Reportable expenditure. — Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars ($10.00) per designated individual per single calendar day.

b. A contract, agreement, promise, or other obligation whether or not legally enforceable.

(13) Solicitation of others. — A solicitation of members of the public to communicate directly with or contact one or more designated individuals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.

b. An e-mail communication or a Web site posting.

c. A communication delivered by print media as defined in G.S. 163-278.38Z.

d. A letter or other written communication delivered by mail or by comparable delivery service.

e. Telephone.

f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter. (1933, c. 11, s. 1; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2001-424, s. 6.10(b); 2005-456, s. 1.; 2006-201, s. 18; 2007-347, s. 6(b); 2007-348, ss. 7, 8(a), (b); 2008-213, ss. 4-8, 90; 2009-129, s. 3.)

Editor's Note. — Former Article 9 of Chapter 120, as rewritten by Session Laws 1975, c. 820, s. 2, was recodified as Article 9A of Chapter 120, by Session Laws 2005-456, s. 1. Session Laws 2006-201, s. 17, repealed former Article 9A of Chapter 120 and incorporated the subject matter of those articles in this Chapter 120C. Where appropriate, the historical citations to sections in former Articles 9 and 9A of Chapter 120 have been added to corresponding sections in this chapter.

Session Laws 2006-201, s. 25, makes this Chapter effective January 1, 2007, and applicable to covered persons and legislative employees, to gifts received, to acts and conflicts of interest that arise, and to offenses committed, on or after January 1, 2007. Furthermore, G.S. 120C-304, as enacted by Session Laws 2006-201, s. 18, is applicable to appointments made on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Session Laws 2006-201, s. 23(a), provides: "Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007."

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Effect of Amendments. — Session Laws 2008-213, ss. 4-8, effective August 15, 2008, in subdivision (a)(8), substituted "individual's job description" for "person's job description" and substituted "legislators or legislative employees" for "designated individuals"; in subdivisions (a)(9)a and b, substituted "designated individual's" for "person's"; in subdivision (a)(10)b, inserted "or governmental unit" twice, substituted "payment for services" for "compensation for the purpose of lobbying," substituted "'payment for services'" for "compensation"; in subdivision (a)(11), inserted "or governmental unit" three times; and added subdivision (a)(11k).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" twice in subdivision (a11).

Session Laws 2009-129, s. 3, effective June 19, 2009, inserted "and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission" in subdivision (a)(6).

§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules or definitions necessary to interpret the provisions of this Chapter and adopt any rules necessary to administer the provisions of this Chapter, except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, orders, and forms as are necessary to administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule. (1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 9; 2008-213, s. 9.)

Effect of Amendments. — Session Laws 2008-213, s. 9, effective August 15, 2008, in subsection (c), substituted "comply with" for "maintain a mailing list of interested persons as provided in"; in subdivision (c)(3), substituted "notify those" for "notify persons"; and in subsection (d), added "under that statute" to the end of the first sentence.

§ 120C-102. Request for advice.

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the Commission shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(a1) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The Commission shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:

(1) Investigation by the Commission.
(2) Any adverse action by the employing entity.
(3) Investigation by the Secretary of State.

(b) Staff to the Commission may issue advice, but not formal advisory opinions, under procedures adopted by the Commission.

(c) The Commission shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsections (c) and (d1) of this section, a request for advice, any advice provided by Commission staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or the Commission staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

(d1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion. (2006-201, s. 18; 2007-348, s. 10; 2008-213, s. 2(c); 2009-570, s. 14.)

Editor's Note. — This section was amended by Session Laws 2008-213, s. 2(c), in the coded bill drafting format provided by G.S. 120-20.1. In subsection (d), the act inserted the reference to "(c)" as indicated by underscoring, but failed to strike through the existing reference. Subsection (d) has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-213, s. 2(c), effective January 1, 2007, and applicable to requests made on and after that date, rewrote the section.

Session Laws 2009-570, s. 14, effective August 28, 2009, substituted "subsections (c) and (d1) of this section" for "subsections (c)(c) and (d1) of this section" in the first sentence of the first paragraph of subsection (d).

§ 120C-103. Lobbying education program.

(a) The Commission shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Commission shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Commission deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Commission within six months of the designated individual's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Commission deems appropriate. The Commission shall also make lobbying education and awareness programs available to lobbyists and lobbyists' principals. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(a1) A designated individual appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) by the Commission shall attend lobbying education and awareness programs within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate.

(b) The Commission shall publish a newsletter containing summaries of the advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request. (2006-201, s. 18; 2008-213, s. 11; 2009-549, s. 2.)

Effect of Amendments. — Session Laws 2008-213, s. 11, effective August 15, 2008, substituted "designated individual's" for "person's" in the third sentence of subsection (a).

Session Laws 2009-549, s. 2, effective August 28, 2009, added subsection (a1).

§ 120C-104. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include an individual having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98. (2006-201, s. 18; 2008-213, s. 12.)

Effect of Amendments. — Session Laws 2008-213, s. 12, effective August 15, 2008, substituted "an individual" for "a person."

§§ 120C-105 through 120C-199: Reserved for future codification purposes.

ARTICLE 2.

Registration.

§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for an individual to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(9) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Unless a resignation is filed under G.S. 120C-210, each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist principal connected to that lobbying communication or activity. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51; 1991, c. 740, s. 1.1; 2004-203, s. 50(a); 2006-201, s. 18; 2008-213, ss. 13, 90; 2009-549, s. 3.)

Editor's Note. — Session Laws 2006-66, s. 6.20, as added by Session Laws 2006-221, s. 3B, provides: "There is created in the Office of State Budget and Management a Special Reserve for Lobbying Registration Reform. Of the funds appropriated to the Office of the Secretary of State in S.L. 2005-276 for Lobbyist Registration Enhancement and the funds appropriated in S.L. 2006-66 to the Office of the Secretary of State for Lobbyist Registration Reform, the sum of one hundred thirty-five thousand eight hundred two dollars ($135,802) in recurring funds and twenty-four thousand dollars ($24,000) in nonrecurring funds shall be transferred to the Reserve.

"After consultation with the Joint Legislative Commission on Governmental Operations, the Director of the Budget may establish two positions and authorize the expenditure of these funds to implement the provisions of House Bill 1843 of the 2005 General Assembly, if enacted."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2008-213, s. 13, effective August 15, 2008, substituted "an individual" for "a person" in subsection (a).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsection (e).

Session Laws 2009-549, s. 3, effective August 28, 2009, added "Unless a resignation is filed under G.S. 120C-210," at the beginning of subsection (d).

§ 120C-201. Lobbyist's registration fee.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. § 501(c)(3). (1975, c. 852, s. 1; 1983, c. 713, s. 50; 1991, c. 740, s. 1.1; 2002-126, s. 29A.33; 2005-456, s. 1; 2006-201, s. 18.)

§§ 120C-202 through 120C-205: Reserved for future codification purposes.

§ 120C-206. Lobbyist principal's authorization.

(a) A written authorization signed by the lobbyist principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 20 business days after the lobbyist's registration. If the written authorization is filed more than 20 business days after the lobbyist's registration and before January 1 of the following year, the lobbyist registration is effective from the date of filing of the lobbyist registration and all reports due under Article 4 of this Chapter shall be filed.

(b) The form of the written authorization shall be prescribed by the Secretary of State and shall include the lobbyist principal's full name, complete address, and telephone number, name and title of any official authorized to sign for the lobbyist principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed. (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2007-347, s. 4; 2008-213, s. 90; 2009-549, s. 4.)

Effect of Amendments. — Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (a) and (b); and substituted "Lobbyist Principal's" for "Lobbyist's Principal's" in the section heading and subsection (b).

Session Laws 2009-549, s. 4, effective August 28, 2009, in subsection (a), substituted "20 business days" for "10 business days" in the first sentence and added the second sentence; and substituted "the written authorization" for "the authorization" near the beginning of subsection (b).

§ 120C-207. Lobbyist principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars ($100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3). (1933, c. 11, s. 4; 1961, c. 1151; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 90.)

Effect of Amendments. — Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "Lobbyist principal's" for "Lobbyist's Principal's" in the section heading and substituted "lobbyist principals" for "lobbyist's principals" in subsection (b).

§§ 120C-208, 120C-209: Reserved for future codification purposes.

§ 120C-210. Resignation and termination.

(a) A registration of a lobbyist under G.S. 120C-200 and the written authorization of that lobbyist principal under G.S. 120C-206 are terminated upon the filing of either a lobbyist resignation or a principal termination with the Secretary of State, whichever occurs first.

(b) Lobbyist resignations and lobbyist principal terminations are effective upon filing. (2009-549, s. 5.)

Editor's Note. — Session Laws 2009-549, s. 20, made this section effective August 28, 2009.

§§ 120C-211 through 120C-214: Reserved for future codification purposes.

§ 120C-215. Other persons required to register.

(a) A person not otherwise required to register under this Chapter shall register and report when the total expense incurred for solicitation of others exceeds three thousand dollars ($3,000) during any 90-day period. Expenses incurred shall mean the costs of producing and transmitting the communication and, if the communication is made at a conference, meeting, or similar event, the costs of planning, hosting, sponsoring, and attending the conference, meeting, or similar event.

(b) A person required to register and report under this section shall be referred to as a "solicitor" for purposes of this Chapter.

(c) No fee shall be charged for registering as a solicitor.

(d) For purposes of this section, "incur" means the point at which a binding obligation arises. (2006-201, s. 18; 2007-348, s. 11.)

§§ 120C-216 through 120C-219: Reserved for future codification purposes.

§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists and liaison personnel in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically. (2006-201, s. 18; 2008-213, s. 15.)

Effect of Amendments. — Session Laws 2008-213, s. 15, effective August 15, 2008, inserted "and liaison personnel" in subsection (a).

§§ 120C-221 through 120C-299: Reserved for future codification purposes.

ARTICLE 3.

Prohibitions and Restrictions.

§ 120C-300. Contingency fees prohibited.

(a) No individual shall act as a lobbyist for payment for services that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment for services to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 16.)

Effect of Amendments. — Session Laws 2008-213, s. 16, effective August 15, 2008, in subsection (a), substituted "individual" for "person," substituted "payment for services" for "compensation"; in subsection (b), substituted "an individual" for "a person," substituted "remuneration" for "compensation," added the last sentence; and in subsection (c), substituted "payment for services" for "compensation paid."

§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election. (1933, c. 11, s. 3; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 90.)

Effect of Amendments. — Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsection (b).

§ 120C-302: Recodified as G.S. 163-278.13C, by Session Laws 2007-347, s. 5(a), effective August 9, 2007.

§ 120C-303. Gifts by lobbyists and lobbyist principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be the ultimate recipient.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b).

(d) Gifts made to a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c).

(e) Gifts made to a nonpartisan state, regional, national, or international organization of which a public servant's agency is a member or a public servant is a member or participant of by virtue of that public servant's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization, shall not constitute a violation of subdivision (a)(2) of this section or of G.S. 138A-32(c). (2006-201, s. 18; 2007-348, s. 12(a), (b); 2008-213, ss. 17-19, 90.)

Effect of Amendments. — Session Laws 2008-213, s. 17(a), effective December 1, 2008, deleted "to a third party" following "give a gift" in subdivision (a)(2).

Session Laws 2008-213, ss. 18 and 19, effective August 15, 2008, in subsection (d), substituted "legislator's or legislative employee's" for "person's"; and in subsection (e), substituted "public servant's" for "person's."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principals" for "lobbyist's principals" in the section heading; and substituted "lobbyist principal" for "lobbyist's principal" in subsection (a).

§ 120C-304. Restrictions.

(a) No legislator or former legislator may register as a lobbyist under this Chapter:

(1) While in office.

(2) Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months after leaving office.

(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist while in office or within six months after leaving office.

(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months after separation from employment as a public servant.

(d) No individual registered as a lobbyist under this Chapter shall serve as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(e) A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person or governmental unit that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person or governmental unit. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(f) Any appointment or registration made in violation of this section shall be void. (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 13(a); 2008-213, ss. 20, 21.)

Editor's Note. — Session Laws 2006-201, s. 25, provides, in part, that this section is applicable to appointments made on or after January 1, 2007.

Effect of Amendments. — Session Laws 2008-213, ss. 20 and 21, effective August 15, 2008, in subsection (c), substituted "public servant or former public servant" for "person serving as a public servant," added "as a public servant" to the end; and in subsection (e), inserted "or governmental unit" twice.

§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure. (2006-201, s. 18; 2008-213, s. 22.)

Effect of Amendments. — Session Laws 2008-213, s. 22, effective August 15, 2008, substituted "designated individual's" for "person's."

§§ 120C-306 through 120C-399: Reserved for future codification purposes.

ARTICLE 4.

Reporting.

§ 120C-400. Reporting of reportable expenditures.

(a) For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer.

(b) This section shall not apply to any reportable expenditure of cash, a cash equivalent, or a fixed asset made directly to a State agency that maintains an accounting of the reportable expenditure that is a public record. (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 14; 2008-213, ss. 23, 90.)

Effect of Amendments. — Session Laws 2008-213, s. 23, effective August 15, 2008, in subdivision (a)(1), deleted "or those persons' immediate family members" following "designated individual," inserted "designated" preceding "individual's employment"; added subdivision (a)(1a); in subdivision (a)(2), substituted "designated individual's" for "person's"; and in subsection (b), inserted "of cash, a cash equivalent, or a fixed asset," substituted " that maintains" for "and that agency maintains."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subdivisions (a)(2) and (a)(3).

§ 120C-401. Reporting generally.

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 15 business days after the end of the reporting period.

(b) For reportable expenditures, each report shall set forth all of the following:

(1) The fair market value or face value if shown.

(2) The date of the reportable expenditure.

(3) A description of the reportable expenditure.

(4) The name and address of the payee or beneficiary.

(5) The name of any designated individual or that designated individual's immediate family member connected with the reportable expenditure.

(b1) For purposes of subdivision (b)(5) of this section, when more than 15 designated individuals benefit from or request a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting or requesting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(b2) For purposes of subdivision (b)(5) of this section, when the reportable expenditure is a gift given with the intent that a designated individual be the ultimate recipient and the lobbyist or lobbyist principal does not know the name or names of the designated individuals, the lobbyist or lobbyist principal shall report a description of the designated individuals and those designated individuals' immediate family members connected with the reportable expenditure that clearly distinguishes its purpose or composition, and an approximate number, if known.

(c) Reportable expenditures shall be reported using the following categories:
(1) Transportation and lodging.
(2) Entertainment.
(3) Food and beverages.
(4) Meetings and events.
(5) Gifts.
(6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified letter, return receipt requested, advising the lobbyist, lobbyist principal, or other person required to report of the delinquency and the penalties provided by law. A late filing fee of fifty dollars ($50.00) per day, commencing on the tenth business day after the date the certified letter is received, applies to a report that is not timely filed. The cumulative late filing fee may not exceed five hundred dollars ($500.00). Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with the late filing fee. Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist principal, or solicitor. No lobbyist, lobbyist principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

(i) Any reportable expenditure promptly paid for at fair market value or promptly returned to a lobbyist or lobbyist principal by a designated individual or a member of the designated individual's immediate family within the reporting period shall not be reported under G.S. 120C-402 or G.S. 120C-403, and if reported, the repayment or return of the expenditure at any time shall be reported by the lobbyist and lobbyist principal on the next report due under this Article.

(j) The Secretary of State shall make available a report form that may be filed by a designated individual or a member of the designated individual's immediate family who promptly declines, returns, pays fair market value for, or donates a reportable expenditure in accordance with G.S. 138A-32(g). The Secretary of State shall index the filing of this form together with the lobbyist or lobbyist principal who gave the reportable expenditure. (1933, c. 11, s. 5;

1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 15(a); 2008-213, ss. 24, 25, 90; 2009-477, s. 1; 2009-549, s. 7(a).)

Effect of Amendments. — Session Laws 2008-213, ss. 24 and 25, effective August 15, 2008, redesignated former subsection (b) as subsection (b), subdivisions (b)(1) through (b)(5), and subsection (b1) and rewrote the sections; and added subsection (b2).

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (e), (f), (h), (i), and (j).

Session Laws 2009-477, s. 1, effective October 1, 2009, in subsection (e), substituted "a certified letter, return receipt requested," for "a certified or registered letter" in the first sentence, added the second and third sentences, and substituted "the late filing fee" for "a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2)" at the end of the fourth sentence.

Session Laws 2009-549, s. 7(a), effective August 28, 2009, substituted "15 business days" for "10 business days" in subsection (a).

§ 120C-402. Lobbyist's reports.

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00).

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.9; 1999-338, s. 1; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 41(b); 2008-213, ss. 27, 90.)

Effect of Amendments. — Session Laws 2008-213, ss. 27 and 90, effective August 15, 2008, substituted "lobbyist principal" for "lobbyist's principal" in subsections (a) and (b)(3); substituted "lobbyist principal's" for "lobbyist's principal's" and inserted "or governmental unit" in subdivision (b)(3).

§ 120C-403. Lobbyist principal's reports.

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for the purpose of lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) With respect to each lobbyist registered under G.S. 120C-206, payment for services paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying. A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary, fee, or retainer that is reasonably allocated for the purpose of lobbying.

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section. (1933, c. 11, s. 5; 1973, c. 108, s. 70; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1991 (Reg. Sess., 1992), c. 1030, s. 51.10; 1999-338, s. 2; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 41(c); 2008-213, ss. 29(a), 90.)

Effect of Amendments. — Session Laws 2008-213, s. 29(a), effective January 1, 2007, and applicable to reports filed on or after that date, in subdivision (b)(3), substituted "With respect to each lobbyist registered under G.S. 120C-206, payment for services" for "Compensation," substituted "paid" for "compensated," substituted "is reasonably allocated for the purpose of lobbying" for "compensates for lobbying," added the last sentence; and in subdivision (b)(4), inserted "With respect to each lobbyist registered under G.S. 120C-206."

Session Laws 2008-213, s. 90, effective August 15, 2008, substituted "Lobbyist principal's" for "Lobbyist's principal's" in the section catchline; substituted "lobbyist principal" for "lobbyist's principal" twice in subsection (a).

§ 120C-404. Solicitor's reports.

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

(1) All reportable expenditures made for the purpose of lobbying during the reporting period.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000). (2006-201, s. 18.)

§ 120C-405. Report availability.

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes. (2006-201, s. 18.)

§§ 120C-406 through 120C-499: Reserved for future codification purposes.

ARTICLE 5.

Liaison Personnel.

§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, community colleges, and other units of government in the executive branch shall designate liaison personnel to lobby for legislative action. This subsection shall not apply to units of local government, or a State agency or board with no staff.

(b) No State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17.

(c) No more than two individuals may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, community colleges, and other units of government in the executive branch.

(d) The Chief Justice of the Supreme Court shall designate at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes. This subsection shall not apply to any office created under Article 60 of Chapter 7A of the General Statutes, so long as that office complies with subsection (a) of this section. (1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3; 2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18; 2007-347, s. 6(a); 2008-213, ss. 30-32.)

Effect of Amendments. — Session Laws 2008-213, ss. 30 through 32, effective August 15, 2008, in subsection (b), substituted "agency or constitutional officer of the State may contract with individuals" for "funds may be used to contract with persons"; in subsection (c), substituted "individuals" for "persons"; and added subsection (d).

§ 120C-501. Applicability of Chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) G.S. 120C-200 shall apply to liaison personnel. No registration fee shall be required for registration under this subsection.

(c) Liaison personal designated under this Article shall file reports under G.S. 120C-402.

(d) G.S. 120C-303 shall apply to liaison personnel with respect to legislators and legislative employees.

(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for the purpose of lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students. (2001-424, s. 6.10(a); 2005-456, s. 1; 2006-201, s. 18; 2008-213, s. 33.)

Effect of Amendments. — Session Laws 2008-213, s. 33, effective August 15, 2008, in subsection (e), inserted "Board of Governors of the," substituted "and its constituent institutions, or the" for "or any of its constituent institutions or designated," and substituted "designated by that board or the constituent institutions" for "of those persons."

§§ 120C-502 through 120C-599: Reserved for future codification purposes.

ARTICLE 6.

Violations and Enforcement.

§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures. The Secretary of State shall refer to the Commission any complaints of violations of this Chapter other than those related solely to Articles 2, 4, or 8 of this Chapter.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of Articles 2, 4, and 8 of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of Articles 2, 4, and 8 of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of Articles 2, 4, and 8 of this Chapter, all other records accumulated in conjunction with the investigation of these complaints, and any records accumulated in the performance of a systematic review shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Secretary of State from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or systematic review shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization. (2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(a); 2008-213, s. 34.)

Effect of Amendments. — Session Laws 2008-213, s. 34, effective August 15, 2008, rewrote subsection (c), which read: "Complaints of violations of Articles 2, 4, and 8 of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4."

OPINIONS OF ATTORNEY GENERAL

Investigation records of the Secretary of State obtained to report lobbying violations under former G.S. 120-47.10 are public records, and do not fall within the exception to the Public Records Act found in G.S. 132-1.4. See opinion of Attorney General to Rodney S. Maddox, Chief Deputy Secretary of State, North Carolina Department of the Secretary of State, 2006 N.C. AG LEXIS 1 (4/3/06).

§ 120C-601. Powers and duties of the Commission.

(a) The Commission may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the Secretary of State.

(b) The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Commission from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization. (2006-201, s. 18; 2006-259, s. 43.5(a); 2008-213, s. 35.)

Editor's Note. — Session Laws 2006-201, s. 18, enacted this section as G.S. 120-601; it was recodified as G.S. 120C-601 at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-213, s. 35, effective August 15, 2008, in subsection (c), substituted "confidential records and may be released only by order of a court of competent jurisdiction" for "records of criminal investigations under G.S. 132-1" in the first sentence, and added the last sentence.

§ 120C-602. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand dollars ($5,000) per violation. In addition to the criminal penalties set forth in this section, the Commission may levy civil fines for a violation of any provision of this Chapter except Article 2, 4, or 8 of this Chapter up to five thousand dollars ($5,000) per violation. (1933, c. 11, s. 8; 1975, c. 820, s. 1; 1991, c. 740, s. 1.1; 1993, c. 539, s. 914; 1994, Ex. Sess., c. 24, s. 14(c); 2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(a).)

§ 120C-603. Enforcement by district attorney and Attorney General.

(a) The Commission or the Secretary of State, as appropriate, may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Commission or any member employee of the Commission shall be referred to the Attorney

General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter. (1975, c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 112; 2005-456, s. 1; 2006-201, s. 18; 2006-259, s. 43.5(b); 2008-213, s. 36.)

Effect of Amendments. — Session Laws 2008-213, s. 36, effective August 15, 2008, inserted "or governmental unit" in subsections (a) and (b).

§§ 120C-604 through 120C-699: Reserved for future codification purposes.

Article 7.

Exemptions.

§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following:

(1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.

(2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who does not act in any further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.

(3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when acting solely in connection with matters pertaining to the office and public duties, except for a person designated as liaison personnel under G.S. 120C-500. For purposes of this subdivision, an individual appointed as a county or city attorney under Part 7 of Article 5 of Chapter 153A of the General Statutes or Part 6 of Article 7 of Chapter 160A of the General Statutes, respectively, shall be considered an employee of the county or city.

(4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.

(5) A person who owns, publishes, or is an employee of any recognized news medium, while engaged in the acquisition and publication of news or news and commentary on behalf of that recognized news medium.

(6) Designated individuals while acting in their official capacity.

(7) A person responding to inquiries from a designated individual and who does not act in any further activities as a lobbyist in connection with that inquiry.

(8) A person who is a political committee as defined in G.S. 163-278.6(14), that person's employee, or that person's contracted service provider.

(1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3; 2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 16.)

§§ 120C-701 through 120C-799: Reserved for future codification purposes.

ARTICLE 8.

Miscellaneous.

§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship related to that designated individual's public service or position valued over two hundred dollars ($200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

(1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any reportable expenditure from a designated individual's extended family member to a designated individual.

(3) Reportable expenditures associated primarily with the designated individual's employment or that designated individual's immediate family member's employment.

(4) Reportable expenditures, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) A scholarship paid for by a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization.

(f) Within 15 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term "scholarship" shall mean a grant-in-aid to attend a conference, meeting, or other similar event. For purposes of this section only, the term "person" shall include all persons as defined in G.S. 138A-3(27) and all governmental units as defined in G.S. 138A-3(15d). (2005-456, s. 1; 2006-201, s. 18; 2007-348, s. 17; 2008-213, ss. 37, 38(a), 39; 2009-549, s. 7(b).)

Effect of Amendments. — Session Laws 2008-213, ss. 37 and 39, effective August 15, 2008, in subsection (c), substituted "designated individual's" for "person's"; and in subsection (g), added the second sentence.

Session Laws 2008-213, s. 38(a), effective January 1, 2007, and applicable to scholarships received on or after that date, in subsection (e), substituted "reportable expenditures" for "gifts" throughout; in subdivision (e)(2), substituted "a designated individual's extended family" for "an extended family"; in subdivision (e)(3), substituted "employment or that designated individual's" for "or that person's"; and added subdivision (e)(6).

Session Laws 2009-549, s. 7(b), effective August 28, 2009, substituted "Within 15 business days" for "Within 10 business days" at the beginning of subsection (f).

§§ 120C-801 through 120C-899: Reserved for future codification purposes.

Chapter 121.

Archives and History.

Article 1.

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Article 1.

General Provisions.

§ 121-1. Short title.

This Article shall be known as the North Carolina Archives and History Act. (1973, c. 476, s. 48.)

Cross References. — As to the Department of Cultural Resources, see § 143B-49 et seq. As to the North Carolina Historical Commission, see §§ 143B-62 through 143B-65.

Legal Periodicals. — For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

§ 121-2. Definitions.

For the purposes of this Article:

(1) "Agency" shall mean any State, county, or municipal office, department, division, board, commission or separate unit of government created or established by constitution or law.

(2) "Commission" shall mean the North Carolina Historical Commission.

(3) "Department" shall mean the Department of Cultural Resources of the State of North Carolina.

(4) "Historic preservation" shall mean any activity reasonably related to the identification, research, conservation, protection, and restoration, maintenance, or operation of buildings, structures, objects, districts, areas, and sites significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.

(5) "Historic property" or "historic properties" shall mean any building, structure, object, district, area, or site that is significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.

(6) "North Carolina Museum of History" shall mean an establishment or establishments administered by the Department of Cultural Resources as the official State museum of history for the collection, preservation, and exhibition of artifacts and other materials that have been determined by the Department or by the Commission to have sufficient historical or other cultural value to warrant retention as evidence of the history and culture of the State and its subdivisions.

(7) "North Carolina State Archives" shall mean an establishment or establishments administered by the Department of Cultural Resources as the State's official repository for the preservation of those public records or other documentary materials that have been determined by the Department in accordance with rules, regulations, and standards of the Historical Commission to have sufficient historical or other value to warrant their continued preservation and have been accepted by the Department for preservation in its custody.

(8) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(9) "Records center" or "records centers" shall mean an establishment or establishments administered by the Department of Cultural Re-

sources primarily for the economical housing, processing, servicing, microfilming or security of public records that must be retained for varying periods of time but which need not be retained in an agency's office equipment and space.

(10) "Secretary" shall mean the Secretary of Cultural Resources.

(11) "State historic site" or "state historic sites" shall mean a property or properties acquired by the State and administered by the Department of Cultural Resources because of its or their historical, archaeological, architectural, or cultural value in depicting the heritage of the State. (1973, c. 476, s. 48.)

Cross References. —As to official records of inoperative boards and agencies, see G.S. 143-268.

§ 121-3. Name.

The archival and historical agency of the State of North Carolina shall be the Department of Cultural Resources. (1945, c. 55; 1955, c. 543, s. 1; 1973, c. 476, s. 48.)

§ 121-4. Powers and duties of the Department of Cultural Resources.

The Department of Cultural Resources shall have the following powers and duties:

(1) To accept gifts, bequests, devises, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Department may either expend both the principal and interest of any gift or bequests or may invest such funds in whole or in part, by and with the consent of the State Treasurer.

(2) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies, and to give advice and assistance to the public officials and agencies in matters pertaining to the economical and efficient maintenance and preservation of public records.

(3) To preserve and administer, in the North Carolina State Archives, such public records as may be accepted into its custody, and to collect, preserve, and administer private and unofficial historical records and other documentary materials relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials, file them according to approved archival practices, and permit them, at reasonable times and under the supervision of the Department, to be inspected, examined, or copied: Provided, that any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.

(4) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department. The Department may charge a reasonable price for such publications and devote the revenue arising from such sales to the work of the Department.

(5) With the cooperation of the State Board of Education and the Department of Public Instruction to develop, conduct, and assist in the

coordination of a program for the better and more adequate teaching of State and local history in the public schools and the institutions of the community college system of North Carolina, including, as appropriate, the preparation and publication of suitable histories of all counties and of other appropriate materials, the distribution of such materials to the public schools and community college system for a reasonable charge, and the coordination of this program throughout the State.

(6) To maintain and administer the North Carolina Museum of History, to collect and preserve therein important historical and cultural materials, and according to approved museum practices to classify, accession, house, and when feasible exhibit such materials and make them available for study.

(7) To select suitable sites on property owned by the State of North Carolina, or any subdivision of the State, for the erection of historical markers calling attention to nearby historic sites and prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured, and when completed, each marker shall be delivered to the Department of Transportation for payment and erection under the provisions of G.S. 136-42.2 and 136-42.3. The Secretary is authorized to appoint a highway historical marker advisory committee to approve all proposed highway historical markers and to establish criteria for carrying out this responsibility.

(8) In accordance with G.S. 121-9 of this Chapter, to acquire real and personal properties that have statewide historical, architectural, archaeological, or other cultural significance, by gift, purchase, devise, or bequest; to preserve and administer such properties; and, when necessary, to charge reasonable admission fees to such properties. In the acquisition of such property, the Department shall also have the authority to acquire nearby or adjacent property adjacent to properties having statewide significance deemed necessary for the proper use, administration, and protection of historic, architectural, archaeological, or cultural properties, or for the protection of the environment thereof.

(9) To administer and enforce reasonable rules adopted and promulgated by the Historical Commission for the regulation of the use by the public of such historical, architectural, archaeological, or cultural properties under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and having been filed according to law, shall have the force and effect of law and any violation of such regulations shall constitute a Class 3 misdemeanor.

(10) To coordinate the objectives of the state-created historical and commemorative commissions with the other policies, objectives, and programs of the Department of Cultural Resources.

(11) To organize and administer a junior historian program, in cooperation with the Department of Public Education, the public schools, and other agencies or organizations that may be concerned therein.

(12) With the approval of the Historical Commission, to dispose of any accessioned records, artifacts, and furnishings in the custody of the Department that are determined to have no further use or value for official or administrative purposes or for research and reference purposes.

(13) To promote and encourage throughout the State knowledge and appreciation of North Carolina history and heritage by encouraging

the people of the State to engage in the preservation and care of archives, historical manuscripts, museum items, and other historical materials; the writing and publication of State and local histories of high standard; the display and interpretation of historical materials; the marking and preservation of historic, architectural, or archaeological structures and sites of great importance; the teaching of North Carolina and local history in the schools and colleges; the appropriate observance of events of importance to the State's history; the publicizing of the State's history through media of public information; and other activities in historical and allied fields.

(14) With the approval of the Historical Commission, to charge and collect fees not to exceed cost for photographs, photocopies of documents, microfilm and other microforms and other audio or visual reproductions of public records or other documentary materials, objects, artifacts, and research materials; and for the restoration and preservation of documents and other materials important for archival or historical purposes.

(15) To encourage and develop, in cooperation with the Department of Administration and in consultation with the Department of Transportation, the Department of Commerce, the Department of Environment and Natural Resources, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the Historic Preservation Foundation of North Carolina, Inc., a central clearinghouse for information on historic preservation for the benefit and use of public and private agencies and persons in North Carolina.

(16) Repealed by Session Laws 2004-203, s. 51, effective August 17, 2004.

(17) **(See Editor's note)** To enter into an agreement with a private nonprofit corporation for the management of facilities to provide food and beverages at the North Carolina Museum of History. Any net proceeds received by the private nonprofit corporation shall be devoted to the work of the Department. Any private nonprofit corporation entering into an agreement with the Department with regard to the management of the facilities may enter into further agreements with private persons or corporations concerning the operation of the facilities. The Department may enter into an agreement in regard to obtaining or installing equipment, furniture, and furnishings for such facilities. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C.S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1; 1971, c. 345, s. 3; 1973, c. 476, s. 48; 1977, c. 464, s. 38; 1981, c. 721; 1989, c. 379; c. 727, s. 218(83); c. 751, s. 11; 1991, c. 757, s. 5; 1991 (Reg. Sess., 1992), c. 959, s. 30; 1993, c. 522, s. 8; c. 539, s. 915; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a); 2004-203, s. 51.)

Local Modification. — Town of Lillington: 2002-47, s. 1.

Editor's Note. — Session Laws 1991, c. 689, s. 192(a), effective July 13, 1991, enacted a subdivision (16) that was similar to the subdivision (16) added by Session Laws 1991, c. 757, s. 5. The version of subdivision (16) enacted by Session Laws 1991, c. 689, s. 192(a) was not repealed, conformed or amended in 1992 or 1993, and has been codified as subdivision (17) at the direction of the Revisor of Statutes.

§ 121-4.1. North Carolina Register of Historic Places.

(a) The Department of Cultural Resources may establish, expand, and maintain a North Carolina Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in North Carolina history, architecture, archaeology, engineering, and culture. Until such time as the North Carolina Register of Historic Places is established, all references to it in the General Statutes and in the rules adopted pursuant to it shall be construed to mean properties and districts in North Carolina that are listed in the National Register of Historic Places.

(b) The North Carolina Historical Commission shall establish criteria for properties to be included in the State Register of Historic Places, and, within such criteria, shall provide for levels of significance as necessary and appropriate.

(c) The North Carolina Historical Commission shall promulgate regulations requiring that before any property or district may be included on the North Carolina Register of Historic Places, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the North Carolina Register until such objection has been withdrawn. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property. (1989, c. 60.)

§ 121-5. Public records and archives.

(a) State Archival Agency Designated. — The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government.

(b) Destruction of Records Regulated. — No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources, except as provided in G.S. 130A-99. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine.

(c) Assistance to Public Officers. — The Department of Cultural Resources shall have the right to examine into the condition of public records and shall, subject to the availability of staff and funds, give advice and assistance to public officials and agencies in regard to preserving or disposing of the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which inventory shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Department of Cultural Resources, establishing a time period for the retention or disposal of each series of records. So long as such approved schedule remains in effect, destruction or disposal of records in accordance with its provisions shall be deemed to have met the requirements of G.S. 121-5(b).

The Department of Cultural Resources is hereby authorized and directed to conduct a program of inventorying, repairing, and microfilming in the counties for security purposes those official records of the several counties which the Department determines have permanent value, and of providing safe storage for microfilm copies of such records. Subject to the availability of funds, such program shall be extended to the records of permanent value of the cities, municipalities, and other subdivisions of government.

(d) Preservation of Permanently Valuable Records. — Public records certified by the Department of Cultural Resources as being of permanent value shall be preserved in the custody of the agency in which the records are normally kept or of the North Carolina State Archives. Any State, county, municipal, or other public official is hereby authorized and empowered to turn over to the Department of Cultural Resources any State, county, municipal, or other public records no longer in current official use, and the Department of Cultural Resources is authorized in its discretion to accept such records, and having done so shall provide for their administration and preservation in the North Carolina State Archives. When such records have been thus surrendered, photocopies, microfilms, typescripts, or other copies of them shall be made and certified under seal of the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department of Cultural Resources; and the Department may charge reasonable fees for these copies. The Department may answer written inquiries for nonresidents of the State and for this service may charge a search and handling fee not to exceed twenty-five dollars ($25.00). The receipts from this fee shall be used to defray the cost of providing this service.

(e) Program Funding. — Fees credited to the Department under G.S. 161-11.6 shall be used to offset the Department's costs in providing essential records management and archival services for public records pursuant to Chapter 121 and Chapter 132 of the General Statutes. (1907, c. 714, s. 5; C.S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1; 1959, c. 1162; 1973, c. 476, s. 48; 1979, c. 361; c. 801, s. 95; 1981, c. 406, ss. 1, 2; 1993, c. 539, s. 916; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 13; 2001-427, s. 3(a); 2009-451, s. 20B.3(b).)

Cross References. — As to larceny of records or papers in the custody of the North Carolina State Archives, see G.S. 14-72. As to mutilation or defacement of records and papers in the North Carolina State Archives, see G.S. 14-76.1. As to expunction of records, see G.S. 15A-145, 15A-146. As to destruction of public records, including revenue records and records of the Employment Security Commission, see G.S. 132-3.

Editor's Note. — Session Laws 1997-309, s. 15, provides that the removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of that act is valid, and the register of deeds is not in violation of G.S. 121-5 or G.S. 132-3.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 20B.3(b), effective October 1, 2009, and applicable to all deeds filed, registered, or recorded on or after that date, added subsection (e).

CASE NOTES

Statutory Authority for Expunction of Files in Criminal Case. — There is no statutory authority for the expunction of the files in a criminal case, except to the extent provided in § 90-113.14 and in this section. State v. Bellar, 16 N.C. App. 339, 192 S.E.2d 86 (1972). But see now §§ 15A-145, 15A-146.

Applied in State v. West, 31 N.C. App. 431, 229 S.E.2d 826 (1976).

§ 121-5.1. State Historical Records Advisory Board.

(a) The State Historical Records Advisory Board, which was constituted in 1975 in accordance with 44 U.S.C. § 2501; 36 C.F.R. § 1206 is continued under State law and shall be located administratively in the Department of Cultural Resources. The Board shall consist of 10 members. Eight members shall be appointed by the Governor for three-year staggered terms, and each member shall have experience in the administration and use of historical records. All current members shall continue to serve until the expiration of their term unless a member is removed or the position becomes vacant, in which case the vacancy shall be filled in accordance with subsection (c) of this section. The Deputy Secretary of the Office of Archives and History and the State Archivist shall both serve as ex officio members of the Board.

(b) The Board's primary duty shall be to serve as the central advisory body for historical records coordination within the State and for the National Historical Publications and Records Commission (NHPRC). In addition, subject to the availability of funds, the Board shall:

(1) Offer assistance, advice, and consultation to State, county, and municipal governments, historic sites, museums, historical societies, and other institutions holding records of historical value concerning the care, preservation, and management of their records.
(2) Solicit, review, and assess grant proposals in connection with NHPRC grants or grants from other sources.
(3) Offer educational programs and conferences.
(4) Conduct statewide studies and surveys of the State's historical records.

(c) The Governor may remove any member for good cause shown. The Governor shall fill any vacancy on the Board. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been appointed and qualified.

(d) Members of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 138-5 and G.S. 138-6, as appropriate.

(e) The Governor shall appoint either the Deputy Secretary of the Office of Archives and History or the State Archivist as the State coordinator as required by NHPRC regulations. The State coordinator shall serve a four-year term and may be reappointed. The State coordinator may designate a deputy State coordinator from the Board's membership.

(f) The Board shall hold at least two meetings each year to conduct business. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of the members of the Board constitutes a quorum for the transaction of business. (2007-150, s. 1.)

Editor's Note. — Session Laws 2007-150, s. 2, made this section effective June 29, 2007.

§ 121-6. Historical publications.

(a) General Provisions. — It shall be the duty of the Department of Cultural Resources to promote and encourage the writing of North Carolina history and to collect, edit, publish, print, and distribute books, pamphlets, papers, manuscripts, documents, maps, and other materials relating to North Carolina archives and history. The Department of Cultural Resources may establish a reasonable charge for such publications and devote the revenue arising therefrom to such additional publication of materials relating to North Carolina archives and history as may be undertaken by the Department of Cultural Resources. Except for reports, bulletins, and other publications issued for free distribution, professional materials including books and journals published by the Department of Cultural Resources are hereby expressly excluded from provisions of G.S. 147-50.

(b) Editing and Publishing of Official Messages and Other Papers of Governor. — During the term of office of each Governor of this State, a copy of all official messages delivered to the General Assembly, addresses, speeches, statements, news releases, proclamations, executive orders, weekly calendars, articles, transcripts of news conferences, lists of appointments, and other official releases and papers of the Governor shall be kept in the Governor's office for delivery to the Department of Cultural Resources at the end of each quarter during the Governor's administration. These papers shall be compiled and a selection made therefrom by a skilled and competent editor. The editor shall edit, according to acceptable scholarly standards, the selected materials which shall be published in a documentary volume as soon as practicable after the conclusion of the term of office of each Governor. If, for any reason, a Governor serves less than a full term, a documentary volume shall be edited and published for such portion of a term as he shall have served. If a Governor serves more than one term, a documentary volume shall be edited and published for each term served. Funds for editorial assistance, printing, binding, and distribution shall be paid from the Contingency and Emergency Fund. The number of copies of each volume to be printed shall be determined by the Department of Cultural Resources in consultation with the Governor whose papers are being published.

(c) It shall be the duty and the responsibility for the Department of Cultural Resources to edit and publish a second or new series of the most significant records of colonial North Carolina. From records which have been compiled in the North Carolina State Archives concerning the colonial period of North Carolina, a selection of the most significant documents shall be made therefrom by a skilled and competent editor. The editor shall edit, according to acceptable scholarly standards, the selected materials which shall be published in documentary volumes not to exceed approximately 700 pages each in length until full and representative published colonial records of North Carolina shall have been achieved. The number of copies of each volume to be so printed shall be determined by the Department of Cultural Resources, and such determination shall be based on the number of copies the Department can reasonably expect to sell in a period of 10 years from the date of publication. In any year during which the Department of Cultural Resources has completed a volume and has it ready for publication, the Department may include in its continuation budget for that year sufficient funds to pay the estimated costs of publishing the volume. In the event that the volume is not published during that year, the appropriation made, or any unencumbered balance, shall revert to the general fund. (1971, c. 480, s. 6; 1973, c. 476, s. 48; 1979, c. 1010; 1981 (Reg. Sess., 1982), c. 1290.)

§ 121-7. Historical museums.

(a) The Department of Cultural Resources shall maintain and administer State historic attractions under the management of the Office of Archives and History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history or specialized regional history museums may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on permanent loan any artifact owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited to the State treasury to the credit of the Office of Archives and History Artifact Fund and shall be used only for the purchase of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged.

(b) Insofar as practicable, the Office of Archives and History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the Office of Archives and History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Office of Archives and History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be shown therein.

(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the Department of Cultural Resources if:

(1) The artifact was placed on loan with the Office of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Office of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and

(2) The artifact has been a part of the inventory of the Office of Archives and History for more than five years; and

(3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records, to locate and inform the owner, his heirs or successors, that the Office of Archives and History

is holding the artifact and to clarify the artifact's status with that Office.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Office of Archives and History.

(d) Any person claiming legal title to an artifact to which the North Carolina Office of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the Department originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Office of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B. (1973, c. 476, s. 48; 1979, c. 861, s. 1; 1987, c. 721, s. 1; 1991, c. 689, s. 191(a); c. 757, s. 6; 1993 (Reg. Sess., 1994), c. 769, s. 12.3; 1997-411, s. 4; 2002-159, s. 35(g).)

§ 121-7.1. Maritime Museum; disposition of artifacts.

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Cultural Resources, with the approval of the North Carolina Historical Commission, may sell, trade, or place on permanent loan any artifact from the collection of the North Carolina Maritime Museum unless the sale, trade, or loan would be contrary to the terms of the acquisition. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an artifact is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museum's collections or exhibits. (1998-212, s. 21(b).)

Editor's Note. — Session Laws 1997-443, s. 14.2, effective July 1, 1997, provides for the transfer of the North Carolina Maritime Museum and associated funds, resources, and personnel from the Department of Agriculture and Consumer Services to the Department of Cultural Resources.

§ 121-7.2. Maritime Museum; branch museum.

The Department of Cultural Resources shall assume from the Southport Maritime Museum, Inc., the administration of the Southport Maritime Museum in Brunswick County and shall operate it as a branch of the North Carolina Maritime Museum. (1999-237, s. 26.1(a).)

Editor's Note. — Session Laws 1999-237, s. 26.1(b) made this section effective upon the completed transfer of assets belonging to the Southport Maritime Museum, Inc., to the State.

The Revisor of Statutes is informed that the Southport Maritime Museum, Inc., transferred and conveyed to the State all its assets.

Session Laws 1999-237, s. 30.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 1.1 provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.4 contains a severability clause.

§ 121-7.3. Admission fees.

The Department of Cultural Resources may charge a reasonable admission fee to any museum administered by the Department. Admission fees collected under this section are receipts of the Department and shall be deposited in a nonreverting account. The Department shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 2004, and shall deposit these receipts into the account. Funds in the account shall be used to support a portion of each museum's operation. The Secretary may adopt rules necessary to carry out the provisions of this section. The Department shall provide a quarterly report to the Joint Legislative Commission on Governmental Operations as to the Department's or museums' anticipated use of funds or expenditures of funds pursuant to this section. (2003-284, s. 35A.4.)

Editor's Note. — Session Laws 2003-284, s. 48.1, provides: "Parts 32 through 47 of this act do not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by those parts before the effective date of its amendment or repeal; nor do they affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

§ 121-7.4. Graveyard of the Atlantic Museum.

The Department of Cultural Resources shall assume from the Graveyard of the Atlantic Museum, the administration of the Graveyard of the Atlantic Museum on Hatteras Island and shall designate it as a member of the State History Museums Division, in accordance with the feasibility study conducted by the Department. (2007-359, s. 1(a).)

Editor's Note. — Session Laws 2007-359, s. 3, made this section effective August 17, 2007.

Session Laws 2007-359, s. 1(b), provides: "Subject to the provisions of G.S. 121-9 and contingent upon successful lease negotiations with the National Park Service and the National Oceanic and Atmospheric Administration, this section becomes effective only if the Graveyard of the Atlantic Museum transfers and conveys to the State all its assets."

The Revisor of Statutes is informed that the contingencies have been met, so that the section has become effective.

§ 121-7.5. Bentonville Battlefield Fund.

(a) Fund. — The Bentonville Battlefield Fund is created as a special fund in the Department of Cultural Resources, Division of State Historic Sites. The interest earned by the Fund shall be credited to the Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for operation, interpretation, maintenance, preservation, development, and expansion at Bentonville Battlefield State Historic Site.

(b) Disposition of Fees. — Notwithstanding Chapter 146 of the General Statutes, all receipts derived from donations or the lease, rental, or other disposition of structures or products of the land owned by or under the supervision or control of the Division of Historic Sites in Johnston County shall be credited to the Fund.

(c) The monies credited to this Fund pursuant to this section are annually appropriated to the Department of Cultural Resources. (2008-107, s. 19A.1.)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 121-8. Historic preservation program.

(a) Historic Preservation Agency Designated. — The historic preservation agency of the State of North Carolina shall be the Department of Cultural Resources.

(b) Surveys of Historic Properties. — The Department of Cultural Resources shall conduct a continuing statewide survey to identify, document, and record properties having historical, architectural, archaeological, or other cultural significance to the State, its communities, and the nation. Upon approval of the North Carolina Historical Commission, the Deputy Secretary of Archives and History or his designee as the State Historic Preservation Officer, may nominate appropriate properties for entry in the National Register of Historic Places as established by the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. section 470. The Department of Cultural Resources shall maintain a permanent file containing research reports, descriptions, photographs, and other appropriate documentation relating to properties deemed worthy of inclusion in the statewide survey.

(c) Statewide Historic Preservation Plan. — The Department of Cultural Resources shall prepare and revise as needed a State plan for historic preservation, which plan, when approved by the North Carolina Historical Commission, shall constitute official State policy for the preservation, or the encouragement of the preservation, of important historic, architectural, archaeological, and other cultural properties in North Carolina.

(d) Cooperation with Federal Government. — The Department of Cultural Resources and/or the Department of Administration may enter into and carry out contracts with the federal government or any agency thereof under which said government or agency grants financial or other assistance to the Department of Cultural Resources to further the purposes of this Chapter. Either of the Departments may agree to and comply with any reasonable conditions not inconsistent with State law which are imposed on such grants. Such grants or other assistance may be accepted from the federal government or an agency thereof and expended whether or not pursuant to a contract.

(e) Cooperation with Local Governments. — The Department shall, within the limits of staff and available funds, cooperate with and assist counties, cities, municipalities, and other subdivisions of government, and, where appropriate, private individuals and organizations, in promoting historic preservation to the end that important properties which are not owned by the State may be preserved or encouraged to be preserved. Such cooperation and assistance may include but not be limited to reviewing historic preservation plans, evaluating historic properties, and providing technical, financial and professional assistance. The Department may further enter into and carry out contracts with local governments or their agencies and with any private party to further the purposes of this Article.

(f) Continuing Programs. — The Department of Cultural Resources shall develop a continuing program of historical, architectural, archaeological, and cultural research and development to include surveys, excavation, salvage, preservation, scientific recording, interpretation, and publication of the State's historical, architectural, archaeological, and cultural resources. A reasonable charge may be made for publications resulting therefrom and the income from such sales may be devoted to the work of the Department.

(g) Abandoned Cemeteries. — The Department of Cultural Resources is authorized to take appropriate measures to record and permanently preserve information of significant historical genealogical or archaeological value when, in the opinion of the Department, any such information located within an abandoned cemetery is in imminent danger of loss or destruction because of the condition or circumstances of the cemetery. The Department may obtain access to any abandoned cemetery for the purpose of recording and preserving information of significant historical, genealogical or archaeological value pursuant to Chapter 15, Article 4A of the General Statutes: Provided, that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their lands for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. Service of this notice may be in any manner prescribed by N.C.G.S. 1A-1 Rule 4(j). Any measures taken by the Department pursuant to this subsection shall be effected in such a manner as to cause as little inconvenience or disruption as possible to the owners of the land upon which the abandoned cemetery is located and of land necessary to obtain access to the cemetery. (1973, c. 476, s. 48; 1981, c. 215; 1989, c. 65; 2002-159, s. 35(h).)

Legal Periodicals. — For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article discussing legal issues of historic preservation for local governments in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

§ 121-9. Historic properties.

(a) Administration of Properties Acquired by State. — Historic or archaeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Cultural Resources. Upon approval of the North Carolina Historical Commission and the Secretary of Cultural Resources, the Department of Cultural Resources may, in its discretion, make a contract with any county or municipality within the State or with any nonprofit corporation or organization for the administration of any portion of such property.

(b) Acquisition of Historic Properties. — For the purpose of protecting or preserving any property of historical, architectural, archaeological, or other cultural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department may, with the approval of the North Carolina Historical Commission and after consultation with the Joint Legislative Commission on Governmental Operations, acquire, preserve, restore, hold, maintain, operate, and dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, or condemnation pursuant to the provisions of Chapter 40A of the General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or moneys available to it from any other source.

(b1) In the case of real property, the North Carolina Historical Commission shall report the following information to the Joint Legislative Commission on Governmental Operations before acquiring the property:

(1) The statewide historical significance of the site.
(2) The potential uses of the site.
(3) The capital requirements of the site over a 20-year period of time.
(4) The annual operating costs of the site.
(5) The expected levels of visitation at the site.
(6) Any other information that would assist in determining the full cost of maintaining, operating, and administering the site as State property.

(c) Interests Which May Be Acquired. — In the case of real property, the interest acquired shall be limited to that estate, interest, or term deemed by the Department to be reasonably necessary for the continued protection or preservation of the property. The Department may acquire the fee simple title, but where it finds that a lesser interest, including any development right, negative or affirmative easement in gross or appurtenant, covenant, lease, or other contractual right of or to any real property to be the most practical and economical method of protecting and preserving historic property, the lesser interest may be acquired.

(d) Conveyance of Property for Preservation Purposes. — In appropriate cases, the Department may acquire or dispose of the fee or lesser interest to any such property for the specific purpose of conveying or leasing the property back to its original owner or of conveying or leasing it to such other person, firm, association, corporation, or other organization under such covenants, deed restrictions, lease, or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. Where such action is taken, the property may be conveyed or leased by private sale. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee to accomplish the purposes of this section.

(e) Use of Property so Acquired. — Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. The property shall not be subject to condemnation by the State of North Carolina or any of its agencies or political subdivisions at any time, unless such method of acquisition is first approved by the Governor and Council of State.

(f) Emergency Acquisition Where Funds Not Immediately Available. — If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Chapter 143C and G.S. 143B-53.1 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise.

(g) Power to Acquire Property by Condemnation. — In the event that a property which has been found by the Department of Cultural Resources to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department of Cultural Resources, after receiving the approval of the North Carolina Historical Commission and of the Governor and Council of State, may acquire the historic property or any interest therein by condemnation under the provisions of Chapter 40A of the General Statutes. The Department of Cultural Resources, upon finding that destruction or serious impairment of the value of the property is imminent, shall file with the Governor and Council of State a report on the importance of the property and the desirability of ownership of the property, or the ownership of an interest therein, by the State of North Carolina. Upon giving their approval, the Governor and Council of State shall cause to have filed such approval with the clerk of the superior court in the county or counties where the property is situated. Until the approval is filed, the power of condemnation may not be exercised. All condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina.

(h) Preservation and Custodial Care of State Capitol. — The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Cultural Resources; and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department of Cultural Resources is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Cultural Resources is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic properties in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Cultural Resources and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration: Provided, however, that the Department of Administration shall seek the advice of the Department of Cultural Resources in matters relating to any alteration, renovation, and furnishing of said offices and areas. (1955, c. 543, s. 1; 1961, c. 724; 1963, c. 210, s. 1; 1965, c. 1129; 1971, c. 480, ss. 1-3, 5; 1973, c. 476, s. 48; 1991 (Reg. Sess., 1992), c. 1030, s. 34; 1993 (Reg. Sess., 1994), c. 682, s. 2; 1995, c. 507, s. 12(b); 1996, 2nd Ex. Sess., c. 18, s. 7.7(a); 2006-203, s. 64.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 64, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, substituted "Chapter 143C and G.S. 143B-53.1" for "Article 1 of Chapter 143" in the last sentence of subsection (f).

Legal Periodicals. — For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

For article discussing legal issues of historic preservation for local government in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

§ 121-9.1. Lake Mattamuskeet Lodge Preservation.

(a) Notwithstanding G.S. 121-9, the State of North Carolina accepts the transfer of the Mattamuskeet Lodge and surrounding property to the State under the Lake Mattamuskeet Lodge Preservation Act, P.L. 109-358. After completion of repairs and renovations by the Department of Cultural Resources, the property shall be transferred to and managed by the Wildlife Resources Commission.

(b) Any plans for repair and renovation of the Mattamuskeet Lodge from the Repairs and Renovations Reserve Account under G.S. 143C-4-3 are subject to review by the Wildlife Resources Commission. (2007-13, ss. 1, 2.)

Editor's Note. — Session Laws 2007-13, s. 1, made this section effective April 12, 2007.

Session Laws 2007-13 provides in its preamble: "Whereas, the Lake Mattamuskeet Lodge Preservation Act, P.L. 109-358, became law October 16, 2006, and provides for transfer to the State of North Carolina of a parcel of real property consisting of approximately 6.25 acres and containing Mattamuskeet Lodge and surrounding property, including the Mattamuskeet National Wildlife Refuge headquarters; and

"Whereas, Section 2(b) of that act provides the transfer is conditional on the State of North Carolina agreeing to restore and maintain the lodge in accordance with Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act; and

"Whereas, due to the unique nature of the property, after repairs and renovations are completed the Wildlife Resources Commission will be a more appropriate management agency; Now, therefore,"

§ 121-10. Security of historic properties.

(a) Designated Employees Commissioned Special Peace Officers by Governor. — Upon application by the Secretary of Cultural Resources, the Governor is hereby authorized and empowered to commission as special peace officers such employees of the Department of Cultural Resources as the Secretary may designate for the purpose of enforcing the laws, rules, and regulations enacted or adopted for the protection, preservation and government of State historic or archaeological properties under the control or supervision of the Department of Cultural Resources. Such employees shall receive no additional compensation for performing the duties of special peace officers under this section.

(b) Powers of Arrest. — Any employee of the Department of Cultural Resources commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule, or regulation on or relating to the State historic or archaeological properties under the control or supervision of the Department of Cultural Resources, and shall have power to pursue and arrest without warrant any person violating in his presence any law, rule, or regulation on or relating to said historic and archaeological properties under the control or supervision of the Department of Cultural Resources.

(c) Bond Required. — Each employee of the Department of Cultural Resources commissioned as a special peace officer under this section shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars ($1,000), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Commissioner of Insurance, and copies of the same, certified by the Commissioner of Insurance, shall be received in evidence in all actions and proceedings in this State.

(d) Oaths Required. — Before any employee of the Department of Cultural Resources commissioned as a special peace officer shall exercise any power of arrest under this Article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1955, c. 543, s. 1; 1973, c. 476, s. 48.)

§ 121-11. Procedures where assistance extended to cities, counties, and other agencies or individuals.

In consideration of the public purpose thereby achieved, the Department of Cultural Resources may assist any county, city, or other political subdivision, corporation or organization, or private individual in the acquisition, maintenance, preservation, restoration, or development of historic or archaeological property by providing a portion of the cost therefor: Provided, that the Department of Cultural Resources may not make any acquisition, maintenance, preservation, restoration, or development of any property, nor any assistance for any property, nor any contribution for these purposes, until:

(1) The property or properties shall have been approved for these purposes by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission,

(2) The report and recommendations of the Commission have been received and considered by the Department of Cultural Resources, and

(3) The Department has found that there is a feasible and practical method of providing funds for the acquisition, restoration, preservation, maintenance, and operation of such property.

In all cases where assistance is extended by the Department of Cultural Resources to nonstate owners of property, whether from State funds or otherwise, it shall be a condition of assistance that

(1) The property assisted shall, upon its acquisition or restoration, be made accessible to the public at such times and upon such terms as the Department of Cultural Resources shall by rule prescribe;

(2) That the plans for preservation, restoration, and development be reviewed and approved by the Department of Cultural Resources;

(3) That the expenditure of such funds be supervised by the Department of Cultural Resources; and

(4) That such expenditures be accounted to the Department in a manner and at such times as are satisfactory to it.

In further consideration of the public purpose thereby achieved, the Department of Cultural Resources may assist any county, city, or other political subdivision, or corporation nonprofit history museum in the development of interpretive, security or climate control programs or projects. Provided, that the Department of Cultural Resources may not make any assistance or contribution from State funds for a program or project until:

(1) The program or project shall have been approved for these purposes by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission;

(2) The report and recommendations of the Commission have been received and considered by the Department of Cultural Resources; and

(3) The Department has found that there is a feasible and practical method of providing funds for the maintenance and operation of such history museum.

In all cases where assistance is extended by the Department of Cultural Resources to nonstate owners of history museums, whether from State funds or otherwise, it shall be a condition of assistance that:

(1) The museum assisted shall be accessible to the public at such times and upon such terms as the Department of Cultural Resources shall by rule prescribe;

(2) Plans for the development of museum programs or projects be reviewed and approved by the Department of Cultural Resources;

(3) The expenditure of such funds be supervised by the Department of Cultural Resources; and

(4) Such expenditures be accounted to the Department in a manner and at such times as are satisfactory to it. (1973, c. 476, s. 48; 1979, c. 861, s. 2; 1985 (Reg. Sess., 1986), c. 1014, s. 171(a).)

Legal Periodicals. — For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 121-12. North Carolina Historical Commission.

(a) Protection of Properties on National Register. — It shall be the duty of the Historical Commission, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, giving due consideration to the competing public interests that may be involved. To this end, the head of any State agency having direct or indirect jurisdiction over a proposed State or state-assisted undertaking, or the head of any State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any State or state-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470.

Where, in the judgment of the Commission, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Commission a reasonable opportunity to comment with regard to such undertaking.

The Historical Commission shall act with reasonable diligence to insure that all State departments, boards, commissions, or agencies potentially affected by the provisions of this section be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each affected State department or agency shall furnish, either upon its own initiative or at the request of the Historical Commission such information as may reasonably be required by the Commission for the proper implementation of this section.

(b) Criteria for State Historic Properties. — The Commission shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historic, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization, or individual. The Commission shall cooperate to the fullest practical extent with any local historical organization and with any city or county historic district properties commission. In evaluating whether a building should be a State historic site, the Commission shall request and review plans for the use and maintenance of the building.

(c) Criteria for State Aid to Historic Properties. — The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or other organization or individual for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations to be administered by the Department of Cultural Resources are proposed. If the property is a building, the Commission shall request and review the plans for the use, maintenance, operation, and purpose of the building and shall comment on the feasibility of the plans in the written report. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) Whether the property is historically authentic;
(2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
(3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
(4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;
(5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and
(6) Such further comments and recommendations that the Commission may make.

(c1) Criteria for State Aid to Historical Museums. — The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations to be administered by the Department of Cultural Resources are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;
(2) The local or regional need for such a program or project;
(3) The estimated total cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;
(4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;
(5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and
(6) Such further comments and recommendations that the Commission may make.

(d) Commission to Furnish Recommendations to Legislative Committees. — The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of assisting a history museum, at least five copies of a report on the findings and recommendations of the Commission relating to such property. (1973, c. 476, s. 48; 1975, c. 19, s. 40; 1979, c. 861, ss. 3-5; 1985 (Reg. Sess., 1986), c. 1014, s. 171(b); 1995, c. 324, s. 12.)

Legal Periodicals. — For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

§ 121-12.1. Grants-in-aid.

Under the concepts of reorganization of State government, responsibility for administering appropriations to the Department of Cultural Resources for grants-in-aid to private nonprofit organizations in the areas of history, art, and culture is hereby assigned to the Department of Cultural Resources. It shall be the responsibility of the Department of Cultural Resources to receive, analyze, and recommend to the Governor and the General Assembly the disposition of any request for funding received by it from or for any of these organizations, and to disburse under provisions of law any appropriations made to the Department for them. Appropriations to the Department of Cultural Resources for grants-in-aid to assist in the restoration of historic sites owned by private nonprofit organizations shall in addition be expended only in accordance with G.S. 121-11, 121-12 and 143B-53.1. (1977, c. 802, s. 47; 1985 (Reg. Sess., 1986), c. 955, s. 40; c. 1014, s. 171(c); 2006-203, s. 65.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 65, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, in the second sentence, deleted ", the Advisory Budget Commission," following "Governor", and substituted "143B-53.1" for "143-31.2" at the end; and deleted the former last sentence, which read: "The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

§ 121-12.2. Procedures for preparing budget requests and expending appropriations for grants-in-aid.

Requests for funding may be submitted by these organizations to the Department of Cultural Resources. If received by any other department of State government except the General Assembly they shall be forwarded to the Department of Cultural Resources. All such requests shall be subjected to the process described in G.S. 121-12.1 and included in the Department's biennial budget request submitted in compliance with the Executive Budget Act.

The Department of Cultural Resources shall notify on a timely basis and in appropriate detail all those recipients of continuing appropriations as grants-in-aid of the requirements for submission of requests for appropriations for the ensuing fiscal period.

The Secretary of Cultural Resources is empowered and directed, in discharging the responsibilities herein assigned, to make regular and timely reviews, studies and recommendations concerning the operations and needs of these organizations for State funds, and to request from the applicants for grants and the recipients of grants through the Department, operating statements, audit reports and other information deemed appropriate. (1977, c. 802, s. 47; 1985 (Reg. Sess., 1986), c. 1014, s. 171(d).)

§ 121-13. Acquisition of portrait of Governor during term of office.

During the term of office of each Governor of this State and at least six months prior to its expiration, the Secretary of the Department of Cultural Resources is directed to select a skilled artist to paint a portrait of such Governor, and have the same suitably framed. Upon the painting and acquisition of such portrait, the same shall be placed in some appropriate building to be designated by the Department of Cultural Resources and which is located in the City of Raleigh.

The cost of the painting and acquisition of said portrait, including the cost of the frame and other necessary expenses incident thereto, shall be paid from the Contingency and Emergency Fund. (1955, c. 1248; 1973, c. 476, s. 48.)

§§ 121-13.1, 121-13.2: Repealed by Session Laws 1973, c. 476, s. 48.

Article 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-14. Acceptance and administration of gifts for restoration of Tryon's Palace; execution of deeds, etc.

The Department of Cultural Resources is hereby authorized and empowered to accept gifts of real or personal property from any source for the restoration of Tryon's Palace at New Bern, North Carolina, and administer the same. All gifts of moneys received by the Department of Cultural Resources shall be deposited in a special account with the Treasurer of North Carolina. The Department of Cultural Resources is hereby given authority to execute such deeds and other instruments as may be necessary. (1945, c. 791, s. 1; 1955, c. 543, s. 8; 1973, c. 476, s. 48.)

Cross References. — As to the Tryon Palace Commission, see §§ 143B-71, 143B-72.

§ 121-15. Authority to acquire necessary property for restoration when certain funds available.

The Department of Cultural Resources is hereby authorized and directed to acquire the necessary property in New Bern, North Carolina, for the restoration of Tryon's Palace, when as much as two hundred fifty thousand dollars ($250,000), or securities in said amount as provided in G.S. 121-17, has been provided by private contributions for this purpose: Provided, that the Department of Cultural Resources at such time shall find that there are reasonable grounds to anticipate that from private donations there will thereafter be provided ample funds to restore the Palace. (1945, c. 791, s. 2; 1949, c. 233, s. 1; 1955, c. 543, s. 8; 1973, c. 476, s. 48.)

§ 121-16. Acquiring lands by purchase or condemnation.

The Department of Cultural Resources, within the limits and amounts appropriated by the General Assembly and any funds available from donations or otherwise, when the conditions set forth in G.S. 121-15 of this Article have been met, is hereby granted the power and authority to purchase sufficient lands for the restoration of the Palace, and the Department is hereby authorized to accept title to lands in the name of the State of North Carolina.

The Department of Cultural Resources shall also have the authority to acquire, by condemnation, under the provisions of Chapter 40A of the General Statutes of North Carolina, including the provisions of the Public Works Eminent Domain Law, which is hereby made applicable to such proceedings, any areas of land in New Bern, North Carolina, as it may find necessary for the restoration of the Palace. (1945, c. 791, s. 3; 1949, c. 233, s. 2; 1955, c. 543, s. 8; 1973, c. 476, s. 48; 2001-487, s. 38(g).)

Editor's Note. — Chapter 40, referred to in this section, was repealed by Session Laws 1981, c. 919, s. 1, effective Jan. 1, 1982. See now Chapter 40A.

§ 121-17. Funds deposited with trustee.

The Governor as Director of the Budget shall have full authority and discretion to approve the acceptance of donations of cash or securities irrevocably deposited with a trustee in lieu of any requirement that funds provided by outside sources be turned over to the State, and funds or securities placed in trust by private donors for such purpose shall be deemed to be funds turned over to the State for acquisition and restoration of the Palace. (1945, c. 791, s. 4.)

§ 121-18. Closing streets and including area in restoration project; acquiring area originally included in Palace grounds.

Whereas the said Tryon's Palace and grounds originally included all of that area in the City of New Bern known and designated as George Street between Pollock and South Front Streets, and the title thereto is in the State of North Carolina, subject to the easement for use of said street, and the use of such portion of said George Street is essential for a proper restoration of Tryon's Palace, when the governing body of the City of New Bern under its general authority imposed by law shall close George Street between Pollock and South Front Streets, or such portion thereof as may be found by the Commission herein authorized to be essential for the purposes of such restoration, the area within such closed street shall be thereafter used exclusively for the restoration of Tryon's Palace. Provided, that the Department of Cultural Resources is authorized and empowered, in its discretion, to acquire for the use of said Tryon's Palace such part of the area in the City of New Bern originally included in the Palace grounds as may be deemed reasonably necessary for the restoration of said Palace. (1945, c. 791, s. 5; 1949, c. 233, s. 3; 1955, c. 543, s. 8; 1973, c. 476, s. 48.)

§ 121-19: Repealed by Session Laws 1973, c. 476, s. 56.

§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace; Commission to acquire and sell artifacts for Tryon's Palace.

(a) In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by Chapter 791 of the Session Laws of 1945 and Chapter 233 of the Session Laws of 1949, the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which were provided for said purpose by the last will and testament of Maude Moore Latham, deceased, and the said Commission shall likewise have the power and authority to receive and expend all such other funds as may be donated or made available for the purpose of restoring the said Palace or for the purpose of furnishing and equipping same and the grounds on which the same is located at New Bern, North Carolina.

The Tryon Palace Commission is hereby authorized, empowered and directed to designate some person as financial officer and treasurer, to disburse the funds and property devised by Maude Moore Latham to the said Tryon Palace Commission for the aforesaid purpose and all such other funds as may be donated or made available to the said Commission for expenditure for the aforesaid purposes. The said financial officer and treasurer shall be made the custodian of all stocks, bonds and securities and funds hereinbefore referred to and shall be authorized and empowered to sell, convert and transfer any stocks, bonds and securities held for such purpose, subject to and with the advice and approval of a finance committee to be appointed by the Tryon Palace Commission for such purpose. The sale and conversion and transfer of said securities shall be made when necessary to provide funds required for the said restoration and at such time as, in the opinion of the finance officer and treasurer, when approved by the finance committee, will be to the interests and advantage of the Tryon Palace Commission and the purposes for which said funds and securities were provided.

The finance officer and treasurer aforesaid shall be required to give such bond as, in the opinion of the Tryon Palace Commission, is proper for the faithful performance as finance officer and treasurer, and shall render to the Tryon Palace Finance Committee, with copies to the Department of Cultural Resources and the State Treasurer, annual or ad interim detailed reports of moneys and/or securities received, exchanged or converted into cash. Checks issued against such funds shall be countersigned by the chairman of Tryon Palace Commission, or by one duly authorized by the said Commission.

The finance officer and treasurer shall serve without compensation; however, any expenses incurred for the faithful performance of said duties, including the cost of the bond, shall be borne by the Tryon Palace Commission, from the proceeds of the funds thus handled.

The Tryon Palace Commission shall have the power and authority in its discretion to call upon the Treasurer of the State of North Carolina to act as treasurer of the said funds and properties and, if so designated, said treasurer shall exercise all the powers and duties herein imposed upon the financial officer and treasurer hereinbefore referred to.

The Tryon Palace Commission is hereby authorized and empowered to expend the funds hereinbefore referred to and it may disburse said funds through the Department of Cultural Resources in the event it is found more practical to do so, and said Commission shall cooperate with the Department of Cultural Resources of the State of North Carolina in the expenditure of the funds for the restoration of said Tryon's Palace provided by two trust funds created by Maude Moore Latham in her lifetime, which funds shall be expended in accordance with the terms and provisions of said trusts for the purposes therein set out.

(b) The Tryon Palace Commission may solicit, accept, and hold artifacts and furnishings, and may acquire them by purchase or gift for the interpretive needs and development of Tryon Palace Historic Sites and Gardens. The Commission may dispose of by trade, sale, or transfer, in accordance with accepted museum practices, any accessioned or unaccessioned artifacts and furnishings in the custody of the Commission, or its appointed officers, that are determined to have no further value for official or administrative purposes or for research, reference, or interpretation. Any proceeds realized through the deaccession and sale of artifacts and furnishings shall be placed in a collections fund administered by the Tryon Palace Commission. Monies received by the Commission, after deduction of the expenses attributable to that sale, shall be used for the acquisition of artifacts and furnishings necessary or desirable for research, reference, and interpretation at Tryon Palace Historic Sites and Gardens. (1953, c. 1100; 1973, c. 1262, s. 86; 1975, c. 387; 1993 (Reg. Sess., 1994), c. 769, s. 12.2.)

§ 121-21. Commission authorized to adopt and copyright certain emblems and lease or license the use of reproductions or replicas.

The Tryon Palace Commission is hereby authorized to adopt an official flag, seal, and other emblems appropriate in connection with the management and operation of the Tryon Palace Restoration, and to copyright the same in the name of the State. The Commission, with the approval of the Governor, is authorized to lease or license the use of reproductions or replicas of such flag, seal, and other emblems upon such terms and conditions as it deems advisable. (1957, c. 1449.)

§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.

(a) Fund. — The Tryon Palace Historic Sites and Gardens Fund is hereby created as a special, interest-bearing, and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. — All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year. (2005-276, s. 19A.1; 2006-180, s. 1.)

ARTICLE 3.

Salvage of Abandoned Shipwrecks and Other Underwater Archaeological Sites.

§ 121-22. Title to bottoms of certain waters and shipwrecks, etc., thereon declared to be in State.

Subject to Chapter 82 of the General Statutes, entitled "Wrecks" and to the provisions of Chapter 210, Session Laws of 1963, and to any statute of the United States, the title to all bottoms of navigable waters within one marine league seaward from the Atlantic seashore measured from the extreme low watermark; and the title to all shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts which have remained unclaimed for more than 10 years lying on the said bottoms, or on the bottoms of any other navigable waters of the State, is hereby declared to be in the State of North Carolina, and such bottoms, shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts shall be subject to the exclusive dominion and control of the State. (1967, c. 533, s. 1.)

Cross References. — As to establishment of a pilot program for the removal of abandoned vessels in the Neuse River Basin, see the editor's note at G.S. 76-40.

Editor's Note. — Chapter 82, §§ 82-1 through 82-18, referred to in the first sentence of this section, was repealed by Session Laws 1971, c. 882, s. 5.

CASE NOTES

Common Law. — Under the common law, wrecks or derelicts became the property of the Crown or its grantee after a year and a day if no owner appeared within that time to claim them. State ex rel. Bruton v. Flying "W" Enters., Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

Legislative Intent. — An examination of the face of the statute and its legislative history reveal the manifest intent of the legislature to vest title in the State of all archaeological artifacts recovered from navigable waters. Nowhere does it appear that the legislature intended to limit the coverage of this section to artifacts associated with shipwrecks. State v. Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973), appeal dismissed, 284 N.C. 617, 201 S.E.2d 690 (1974).

A cannon rolled off a bluff into the river by the Confederate Army in 1865 is an archaeological artifact within the meaning of this section. State v. Armistead, 19 N.C. App. 704, 200 S.E.2d 226 (1973), appeal dismissed, 284 N.C. 617, 201 S.E.2d 690 (1974).

Cited in Riebe v. Unidentified, Wrecked & Abandoned 18th Century Shipwreck, 691 F. Supp. 923 (E.D.N.C. 1987).

§ 121-23. Department is custodian of underwater personal property of the State and may adopt rules concerning the property.

The Department of Cultural Resources is the custodian of shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts to which the State has title under G.S. 121-22. The Department of Cultural Resources may adopt rules necessary to preserve, protect, recover, or salvage any or all of these properties. (1967, c. 533, s. 2; 1973, c. 476, s. 48; 1993, c. 249, s. 1.)

§ 121-24. Department authorized to establish professional staff.

The Department of Cultural Resources is also authorized to establish a professional staff for the purpose of conducting and/or supervising the surveillance, protection, preservation, survey and systematic underwater archaeological recovery of underwater materials as defined in G.S. 121-22 hereof. (1967, c. 533, s. 3; 1973, c. 476, s. 48.)

§ 121-25. License to conduct exploration, recovery or salvage operations.

Any qualified person, firm or corporation desiring to conduct any type of exploration, recovery or salvage operations, in the course of which any part of a derelict vessel or its contents or other archaeological site may be removed, displaced or destroyed, shall first make application to the Department of Cultural Resources and obtain a permit or license to conduct such operations. If the Department of Cultural Resources shall find that the granting of such permit or license is in the best interest of the State, it may grant such applicant a permit or license for such a period of time and under such conditions as the Department may deem to be in the best interest of the State. Such permit or license may include but need not be limited to the following:

(1) Payment of monetary fee to be set by the Department;
(2) That a portion or all of the historic material or artifacts be delivered to custody and possession of the Department;
(3) That a portion of all of such relics or artifacts may be sold or retained by the licensee;
(4) That a portion or all of such relics or artifacts may be sold or traded by the Department.

Permits or licenses may be renewed upon or prior to expiration upon such terms as the applicant and the Department may mutually agree. Holders of permits or licenses shall be responsible for obtaining permission of any federal agencies having jurisdiction, including the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers prior to conducting any salvaging operations. (1967, c. 533, s. 4; 1973, c. 476, s. 48; 2005-367, s. 2.)

Editor's Note. — This section, as amended by Session Laws 2005-367, s. 2, effective October 1, 2005, is applicable to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date.

§ 121-25.1. Criminal record checks of applicants for permit or license.

(a) The following definitions apply to this section:

(1) Applicant. — A person or entity applying for a permit or license under G.S. 121-25 to conduct any type of exploration, recovery, or salvage operations of any part of a derelict vessel or its contents or other archaeological site.
(2) Criminal history. — A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct activities related to the surveillance, protection, preservation, and archaeological recovery of property subject to the exclusive dominion and control of the State under G.S. 121-22. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article

14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Cultural Resources to deny a permit or a license to an applicant. The Department of Cultural Resources shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the Department of Cultural Resources shall consider all of the following factors regarding the conviction:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
(6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a crime. (2005-367, s. 3.)

§ 121-26. Funds received by Department under § 121-25.

Any funds which may be paid to or received by the Department of Cultural Resources under the terms of G.S. 121-25 hereof may be allocated for use by the Department of Cultural Resources for continuing its duties under this Article, subject to the approval of the Department of Administration. (1967, c. 533, s. 5; 1973, c. 476, s. 48; 1975, c. 879, s. 46.)

§ 121-27. Law-enforcement agencies empowered to assist Department.

All law-enforcement agencies and officers, State and local, are hereby empowered to assist the Department of Cultural Resources in carrying out its duties under this Article. (1967, c. 533, s. 6; 1973, c. 476, s. 48.)

§ 121-28. Violation of Article a misdemeanor.

Any person violating the provisions of this Article or any rules or regulations established thereunder shall be guilty of a Class 1 misdemeanor. (1967, c. 533, s. 8; 1993, c. 539, s. 917; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 121-29 through 121-33: Reserved for future codification purposes.

ARTICLE 4.

Conservation and Historic Preservation Agreements Act.

§ 121-34. Short title.

The title of this Article shall be known as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 1; 2004-195, s. 1.3.)

Legal Periodicals. — For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

For article, "Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation," see 11 N.C. Cent. L.J. 243 (1980).

For article, "Revolving Funds: In the Vanguard of the Preservation Movement," see 11 N.C. Cent. L.J. 256 (1980).

For article, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-35. Definitions.

Subject to any additional definitions contained in this Article, or unless the context otherwise requires:

(1) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control

or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.

(2) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any agency, department, or instrumentality of the United States, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements.

(3) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the land or any improvement thereon, or in any other [order] of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations, to forbid or limit any or all (i) alteration, (ii) alterations in exterior or interior features of the structure, (iii) changes in appearance or condition of the site, (iv) uses not historically appropriate, or (v) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site. (1979, c. 747, s. 2; 1995, c. 443, s. 1.)

Editor's Note. — Session Laws 1995, c. 443, s. 2, effective July 18, 1995, provides for the validation and confirmation of any conservation agreement or preservation agreement entered into by an agency, department, or instrumentality of the United States on or after June 1, 1979, and prior to the effective date of that act, July 18, 1995.

Legal Periodicals. — For article, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-36. Applicability.

(a) This Article shall apply to all conservation and preservation agreements falling within its terms and conditions.

(b) This Article shall not be construed to make unenforceable any restriction, easement, covenant or condition which does not comply with the requirements of this Article.

(c) This Article shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain or otherwise and to use property of any kind for public purposes. (1979, c. 747, s. 3.)

Legal Periodicals. — For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-37. Acquisition and approval of conservation and preservation agreements.

Subject to the conditions stated in this Article, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement. (1979, c. 747, s. 4.)

§ 121-38. Validity of agreements.

(a) No conservation or preservation agreement shall be unenforceable because of

(1) Lack of privity of estate or contract, or
(2) Lack of benefit to particular land or person, or
(3) The assignability of the benefit to another holder as defined in this Article.

(b) These agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land.

(c) These agreements may be effective perpetually or for shorter stipulated periods of time.

(d) These agreements may impose present, future, or continuing obligations on either party to the agreement, or their successors, in furtherance of the purposes of the agreement.

(e) These agreements may contain provisions which require the payment of a fee upon a future conveyance of the property that is subject to the agreement. (1979, c. 747, s. 5; 2008-165, s. 1.)

Editor's Note. — Session Laws 2008-165, s. 4, is a severability clause.

Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Effect of Amendments. — Session Laws 2008-165, s. 1, effective August 3, 2008, substituted "These" for "Such" throughout the section; and added subsection (e).

Legal Periodicals. — For article, "Private Land Use Controls: Enforcement Problems with Real Covenants and Equitable Servitudes in North Carolina," see 22 Wake Forest L. Rev. 749 (1987).

§ 121-39. Enforceability of agreements.

(a) Conservation or preservation agreements may be enforced by the holder by injunction and other appropriate equitable relief administered or afforded by the courts of this State. Where appropriate under the agreement, damages, or other monetary relief may also be awarded either to the holder or creator of the agreement or either of their successors for breach of any obligations undertaken by either.

(b) Such agreements shall entitle representatives of the holder to enter the involved land or improvement in a reasonable manner and at reasonable times to assure compliance. (1979, c. 747, s. 6.)

§ 121-40. Assessment of land or improvements subject to agreement.

For purposes of taxation, land and improvements subject to a conservation or preservation agreement shall be assessed on the basis of the true value of the land and improvement less any reduction in value caused by the agreement. (1979, c. 747, s. 7.)

Legal Periodicals. — For article, "Preservation Law 1976-1980: Faction, Property Rights and Ideology," see 11 N.C. Cent. L.J. 276 (1980).

For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

CASE NOTES

To find the true value of property subject to conservation easements, the State Property Tax Commission must determine the market value prior to the granting of the easements and then reduce that value by applying a damage factor caused by the granting of the conservation easements. Determining the highest and best use of the property prior to the granting of the easement is a critical part of the appraisal process. Rainbow Springs Partnership v. County of Macon, 79 N.C. App. 335, 339 S.E.2d 681 (1986).

§ 121-41. Public recording of agreements.

(a) Conservation agreements shall be recorded in the office of the Register of Deeds of the county or counties in which the subject land or improvement is located, in the same manner as deeds are now recorded.

(b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties, and book and pages of recording, the agreement which is the subject of the release or termination. (1979, c. 747, s. 8.)

Legal Periodicals. — For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

§ 121-42. Citation of Article.

This Article shall be known and may be cited as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 9; 2004-195, s. 1.4.)

Chapter 122.

Hospitals for the Mentally Disordered.

§§ 122-1 through 122-122: Repealed by Session Laws 1985, c. 589, s. 1.

Editor's Note. — As to comparable sections of repealed Chapter 122 and new Chapter 122C, see the table at the end of Chapter 122C.

Session Laws 1985, c. 589, s. 63(g) provided that any person serving as a guardian under the authority of former G.S. 122-24.1 would continue to serve as guardian notwithstanding the repeal of that section.

Session Laws 1985, c. 589, s. 63(k) provided that substance abusers committed as outpatients pursuant to G.S. 122-58.7A:1 or G.S. 122-58.8 prior to the effective date of the act (January 1, 1986) would not be subject to the provisions of G.S. 122C-290 through 122C-293 and that if appropriate, new involuntary commitment proceedings could be instituted regarding such individuals pursuant to G.S. 122C-281 through 122C-289.

Session Laws 1985, c. 589, s. 63(n) provided that any ordinance, rule, or regulation made under G.S. 122-95 and in effect on December 31, 1985, would continue in effect until amended, modified, or repealed by the Secretary of Human Resources under G.S. 122C-403.

Repealed G.S. 122-55.8 was amended by Session Laws 1985, c. 99, effective April 16, 1985. Repealed G.S. 122-98.3 was amended by Session Laws 1985, c. 408, s. 2, effective July 1, 1985, and by Session Laws 1985, c. 408, s. 4, effective July 4, 1985.

Chapter 122A.

North Carolina Housing Finance Agency.

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§ 122A-1. Short title.

This Chapter shall be known and may be cited as the "North Carolina Housing Finance Agency Act." (1969, c. 1235, s. 1; 1973, c. 1296, s. 1.)

State Government Reorganization. — The North Carolina Housing Corporation was transferred to the Department of Administration by G.S. 143A-85 (now repealed), enacted by Session Laws 1971, c. 864.

North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2004-124, ss. 20A.1(a)-(e) provide: "(a) The North Carolina Housing Finance Agency shall develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include counties selected at the discretion of the Agency on the basis of increased rates of foreclosure, actual foreclosure filings, unemployment, the need of local counseling agencies for increased capacity to serve clients in need of assistance to avoid losing their homes to foreclosure, the availability of funds, and other factors the Agency determines to be relevant.

"(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

"(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

"(4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, and to provide services such as direct mortgagee negotiations on behalf of unemployed workers, and to process loan applications for the Agency.

"(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

"(6) No later than May 1, 2005, report to the General Assembly on the effectiveness of the Program in accomplishing its purposes, and provide any other information the Agency determines is pertinent or that the General Assembly requests.

"(b) As used in this section, the following definitions apply:

"(1) Agency. — The North Carolina Housing Finance Agency.

"(2) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

"(3) Mortgage. — An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

"(4) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

"(c) The North Carolina Housing Finance Agency shall conduct a study and convene meetings of experts for the purpose of developing a report to the 2005 General Assembly. The report shall include recommendations regarding (i) the problem of increasing foreclosure filings statewide, (ii) improvements to the laws regarding foreclosure procedures and other laws that impact foreclosure filings, and (iii) the benefits and feasibility of creating a foreclosure avoidance loan fund. The Agency may use no more than twenty-five thousand dollars ($25,000) of the funds appropriated in this act to the Agency to implement this subsection. The Agency shall report its recommendations to the General Assembly on or before May 1, 2005.

"(d) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

"(1) Accelerate the maturity of any mortgage obligation covered under this section.

"(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

"(3) Take possession of any security of the mortgagor for the mortgage obligation.

"(4) Procure or receive a deed in lieu of foreclosure.

"(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

"(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

"The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

"If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

"Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

"(e) Rule Making. — Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

"(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

"(2) Accept oral and written comments on the proposed procedures.

"(3) Hold at least one public hearing on the proposed procedures."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Housing Finance Agency to Continue and Expand North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2007-323, s. 22.1(a)-(f), provides: "(a) The North Carolina Housing Finance Agency shall continue, develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include all counties that had greater than seven percent (7%) average unemployment in the 2004-2005 fiscal year.

"(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

"(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

"(4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.

"(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

"(6) No later than April 1, 2008, report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests.

"(b) As used in this section, the following definitions apply:

"(1) Agency. — The North Carolina Housing Finance Agency.

"(2) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

"(3) Mortgage. — An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

"(4) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

"(c) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

"(1) Accelerate the maturity of any mortgage obligation covered under this section.

"(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

"(3) Take possession of any security of the mortgagor for the mortgage obligation.

"(4) Procure or receive a deed in lieu of foreclosure.

"(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

"(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

"The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

"If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

"Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

"(d) Rule Making. — Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

"(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

"(2) Accept oral and written comments on the proposed procedures.

"(3) Hold at least one public hearing on the proposed procedures.

"(e) Funds appropriated under this act to the Agency that are unexpended and unencumbered shall not revert but shall remain available to be used for the expansion of the program to additional counties as provided by this section.

"(f) This section applies only to the 2007-2008 fiscal year."

Session Laws 2008-34, s. 7, effective June 30, 2008 and expiring July 15, 2008 amended 2007-323, s. 22.1(f) by rewriting it to read: "This section applies to the 2007-2008 fiscal year and to the 2008-2009 fiscal year." Because the amendment expired on July 15, 2008, the text of Session Laws 2007-323, s. 22.1(f) has been set out in this note as it appeared prior to the 2008 amendment.

For previous similar provisions, see Session Laws 2005-276, ss. 20.2(a)-(f).

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

For previous similar provisions, see Session Laws 2005-276, ss. 20.2(a)-(f).

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Legal Periodicals. — For note on taxation and revenue bonds to finance low-income housing, see 49 N.C.L. Rev. 830 (1971).

For survey of 1982 law relating to constitutional law, see 61 N.C.L. Rev. 1052 (1983).

CASE NOTES

Constitutionality. — This Chapter is not unconstitutional on its face or when considered with reference to the facts set forth in the instant case. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The West Virginia Housing Development Fund Act is similar to this Chapter. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The public purpose of this Chapter is to make additional residential housing available to persons and families of lower income by promoting the construction thereof. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Construction Beneficial to Entire Building Industry. — Unquestionably, when construction of residential housing is made possible by the North Carolina Housing Finance Agency's assistance, all persons in the building industry benefit. In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

This Chapter was enacted for a public purpose and the North Carolina Housing Corporation's authorized activities pursuant thereto are for a public purpose. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

General Assembly Determines Wisdom of Public Policy and Program. — Whether the public policy and program established by the North Carolina Housing Corporation Act is wise or unwise is for determination by the General Assembly. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 122A-2. Legislative findings and purposes.

The General Assembly hereby finds and declares that as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods and as a result of actions involving highways, public facilities and urban renewal activities there exists in the State of North Carolina a serious shortage of decent, safe and sanitary residential housing available at low prices or rentals to persons and families of lower income. This shortage is severe in certain urban areas of the State, is especially critical in the rural areas, and is inimical to the health, safety, welfare and prosperity of all residents of the State and to the sound growth of North Carolina communities.

The General Assembly hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford, or to achieve the urgently needed rehabilitation of much of the present lower income housing. It is imperative that the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout North Carolina.

The General Assembly hereby finds and declares further that the purposes of this Chapter are to provide financing for residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income.

The General Assembly hereby finds and declares further that in accomplishing this purpose, the North Carolina Housing Finance Agency, a public agency and an instrumentality of the State, is acting in all respects for the benefit of the people of the State in the performance of essential public functions and serves a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the North Carolina Housing Finance Agency, is empowered to act on behalf of the State of North Carolina and its people in serving this public purpose for the benefit of the general public.

The General Assembly hereby further finds and declares that it shall be the policy of said Agency, whenever feasible, to give first priority in its programs to assisting persons and families of lower income in the purchase and rehabilitation of residential housing, and to undertake its programs in the areas where the greatest housing need exists, and to give priority to projects and individual units which conform to sound principles and practices of comprehensive land use and environmental planning, regional development planning and transportation planning as established by units of local government and regional organizations having jurisdiction over the area within which such projects and units are to be located if such government agencies exist in an area under consideration. However, no area of need shall be penalized because government planning agencies do not exist in such areas.

The General Assembly hereby also further finds and declares that private enterprise and investment have not been able to provide, without assistance, the needed installation of energy saving materials in owner occupied residences of persons and families of lower income. It is imperative for the health, safety and welfare of these persons and the general public that their residences be suitably heated at affordable cost in order to provide decent housing; and that the consumption of nonrenewable sources of energy be reduced. Therefore, the General Assembly finds that one of the purposes of this Chapter is to assist persons and families of lower income to obtain loans for the purpose of heating their homes at affordable cost and at the same time to significantly reduce the amount of consumption of nonrenewable sources of energy. (1969, c. 1235, s. 2; 1973, c. 1296, s. 2; 1977, c. 1083, s. 1.)

CASE NOTES

Purpose of Agency. — The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) was created as a public agency, an instrumentality of the State of North Carolina, and empowered to act on behalf of the State for the purpose of providing residential housing "for sale or rental to persons and families of lower income." Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Cited in City of Asheville v. Woodberry Assocs., 114 N.C. App. 377, 442 S.E.2d 328 (1994).

§ 122A-3. Definitions.

The following definitions apply in this section:

(1) Agency. — The North Carolina Housing Finance Agency created by this Chapter.

(2) Bonds or notes. — The bonds or the bond anticipation notes or construction loan notes authorized to be issued by the Agency under this Chapter.

(3) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

(4) Energy conservation loan. — A loan obtained from a mortgage lender for the purpose of satisfying an existing obligation of a borrower who is the resident owner of a single-family dwelling or of "residential housing." The existing obligation of the owner in an "energy conservation loan" must have been incurred to pay for the purchase of materials or the installation of materials, or both, which results in a significant decrease in the amount of consumption of nonrenewable sources of energy in order to provide or maintain a comfortable level of room temperatures in his residence during the winter. "Energy conservation loan" does not include a loan obtained to refinance an existing loan agreement unless payment or collection of the original loan was guaranteed by the Agency.

(5) Federally insured securities. — An evidence of indebtedness secured by a first mortgage lien on residential housing for persons of lower income and insured or guaranteed as to repayment of principal and interest by the United States or any agency or instrumentality thereof.

(6) Governmental agency. — Any department, division, public agency, political subdivision, or other public instrumentality of the State, the federal government, any other State or public agency, or any two or more thereof.

(7) Mortgage or mortgage loan. — A mortgage loan for residential housing, including, without limitation, a mortgage loan to finance, either temporarily or permanently, the construction, rehabilitation, improvement, or acquisition and rehabilitation or improvement of residential housing and a mortgage loan insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage. A mortgage obligation may be evidenced by a security document and secured by a lien upon real property, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

(8) Mortgage lenders. — Any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, mortgage banking company, the federal government, and any other financial institution authorized to transact business in the State.

(9) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

(10) Obligations. — Any bonds or bond anticipation notes authorized to be issued by the Agency under the provisions of this Chapter.

(11) Persons and families of lower income. — Persons and families deemed by the Agency to require such assistance as is made available by this Chapter on account of insufficient personal or family income, taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower-income basis, and (v) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing and deemed by the Agency therefore to be eligible to occupy residential housing financed wholly or in part, with mortgages, or with other public or private assistance.

(12) Rehabilitation. — The renovation or improvement of residential housing by the owner of said residential housing.

(13) Residential housing. — A specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the rehabilitation of buildings and improvements, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(14) State. — The State of North Carolina. (1969, c. 1235, s. 3; 1973, c. 1296, ss. 3-6, 8-14, 16, 17; 1975, c. 19, s. 42; 1977, c. 1083, s. 2; 1979, 2nd Sess., c. 1238, s. 1; 1981, c. 344, s. 1; 1983, c. 148, s. 1; 2008-107, s. 21.1(a).)

Editor's Note. — The definitions in this section were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 21.1(a), effective July 1, 2008, rewrote the section.

CASE NOTES

Function of Agency. — The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) does not legislate but determines factually, by application of the factors the General Assembly has prescribed, what persons or families are persons and families of lower income and therefore entitled to the benefits of this Chapter. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Applied in In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

§ 122A-4. North Carolina Housing Finance Agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Agency shall be governed by a board of directors composed of 13 members. The directors of the Agency shall be residents of the State and shall not hold other public office.

(c) The General Assembly shall appoint eight directors, four upon the recommendation of the Speaker of the House of Representatives (at least one of whom shall have had experience with a mortgage-servicing institution and one of whom shall be experienced as a licensed real estate broker), and four upon the recommendation of the President Pro Tempore of the Senate (at least one of whom shall be experienced with a savings and loan institution and one of whom shall be experienced in home building). Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Notwithstanding any other provision of law, the terms of the four noncategorical appointments by the General Assembly shall expire on June 30, 1983. Subsequent noncategorical appointments shall be for terms of two years each. The terms of the initial categorical appointees by the General Assembly upon the recommendation of the Speaker shall expire on June 30, 1983; the terms of subsequent appointees shall be two years. The term of one of the initial categorical appointees by the General Assembly upon the recommendation of the President of the Senate shall expire on June 30, 1983, and the other on June 30, 1985; the terms of subsequent appointees shall be four years.

(d) The Governor shall appoint four of the directors of the Agency; one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in public housing policy, and one shall be experienced in the manufactured housing industry. The four appointees of the Governor shall be appointed for staggered four-year terms, two being appointed initially for three years and two for four years, and shall continue in office until their successors are duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(e) Any member of the board of directors shall be eligible for reappointment. The 12 members of the board shall then elect a thirteenth member to the board by simple majority vote. Each member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the Secretary of State.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed by the Board of Directors. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of any other officers it finds necessary or advisable, and the Board of Directors shall fix the compensation of these officers. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. The Secretary may have copies made of all minutes and other records and documents of the Agency and may give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 26; 1995, c. 490, s. 24; 2004-124, s. 31.15(a).)

Cross References. — For state personnel system, see Chapter 126.

Housing Finance Agency for the federal HOME Program. — Session Laws 2005-276, s. 20.1(a), provides: "Funds appropriated in this act to the Housing Finance Agency for the federal HOME Program shall be used to match federal funds appropriated for the HOME Program. In allocating State funds appropriated to match federal HOME Program funds, the Agency shall give priority to HOME Program projects, as follows:

"(1) First priority to projects that are located in counties designated as Tier One, Tier Two, or Tier Three Enterprise Counties under G.S. 105-129.3; and

"(2) Second priority to projects that benefit persons and families whose incomes are fifty percent (50%) or less of the median family income for the local area, with adjustments for family size, according to the latest figures available from the United States Department of Housing and Urban Development.

"The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year concerning the status of the HOME Program and shall include in the report information on priorities met, types of activities funded, and types of activities not funded."

Session Laws 2005-276, s. 20.1(b), provides: "If the United States Congress changes the HOME Program such that matching funds are not required for a given program year, then the Agency shall not spend the matching funds appropriated under this act for that program year."

Session Laws 2005-276, s. 20.1(c), provides: "Funds appropriated in this act to match federal HOME Program funds shall not revert to the General Fund on June 30, 2006, or on June 30, 2007."

For similar provisions, see Session Laws 2001-424, ss. 16.1(a) to (c); and Session Laws 2003-284, ss. 20.1(a) to (c).

State Government Reorganization. — Session Laws 1981, c. 895, s. 1, provided: The North Carolina Housing Finance Agency is transferred to the Office of State Budget and Management; this transfer shall be neither a Type I nor Type II transfer as defined by G.S. 143A-6; the purpose of this transfer is to permit the board of directors of the North Carolina Housing Finance Agency to exercise the powers granted to the agency by Chapter 122A of the General Statutes and all management functions of the agency, as defined by G.S. 143A-6(c), independently of the direction, supervision or control of the Office of State Budget and Management (now the Office of State Budget, Planning, and Management); provided, however, that the agency shall be subject to the management functions of reporting and budgeting, as defined by G.S. 143A-6 to the extent that the agency shall submit its budgets and reported expenditures to the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) in accordance with the provisions of the Executive Budget Act and shall receive any monies appropriated to the agency by the General Assembly through appropriations to the Office of State Budget and Management (now the Office of State Budget, Planning, and Management) which are designated for use by the agency.

Editor's Note. — Session Laws 1993, c. 321, s. 305(a), effective July 1, 1993, provides: "(a) The statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Housing Coordination and Policy Council, the HOME Program, the Permanent Housing for the Handicapped Homeless Program, and the Comprehensive Housing Affordability Strategy, are transferred from the Division of Community Assistance, Department of Commerce, to the Housing Finance Agency."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

CASE NOTES

Cited in In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

§ 122A-5. General powers.

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To participate in any federally assisted lease program for housing for persons of lower income under any federal legislation, including, without limitation, section 8 of the National Housing Act; provided, however, that such participation may take place only upon the request and approval of the governing body of the county, city or town in which any such project is to be located;

(2) To make or participate in the making of mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the Agency that mortgage loans are not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;

(3) To purchase or participate in the purchase and enter into commitments by itself or together with others for

a. The purchase of mortgage loans made by mortgage lenders to sponsors of residential housing or to persons of lower income for residential housing where the Agency has given its approval prior to the initial making of the mortgage loan; provided, however, that any such purchase shall be made only upon the determination by the Agency that mortgage loans were, at the time the approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, or

b. The purchase of mortgage loans made by mortgage lenders without such prior approval to sponsors of housing for persons and families of any income or to persons of any income for housing upon such terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing as the Agency may prescribe by its rules and regulations; provided, however, that (i) any such purchase of existing mortgage loans shall be made only upon the determination by the Agency that such new mortgage loans are not otherwise available from private lenders upon reasonably equivalent terms and conditions, and (ii) the Agency shall purchase mortgage loans made to sponsors of housing for persons and families not of lower income or to persons not of lower income for housing only upon the determination by the Agency that mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing are not available for purchase by the Agency upon reasonable terms and conditions;

(4) Repealed by Session Laws 1973, c. 1296, s. 24;

(4a) To make loans to mortgage lenders on terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to originate new mortgage loans to (i) sponsors of residential housing for persons and families of lower income and persons and families of moderate income and (ii) persons and families of lower income and persons and families of moderate income for residential housing. The loans to mortgage lenders and the loans to be made by such mortgage lenders shall be made on such applicable terms and conditions as are set forth in rules and regulations of the Agency; Provided, however, that loans shall be made by such mortgage lenders only upon the determination by the Agency that such financing is not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;

(6) To acquire on a temporary basis real property, or an interest therein, in its own name, by purchase, transfer or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Agency has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to rent or lease such property to a tenant pending such sale, transfer or conveyance;

(7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a loan of any type permitted by this Chapter;

(8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the Agency is a party;

(10) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue its obligation as evidence of any such borrowing;

(11) To include in any borrowing such amounts as may be deemed necessary by the Agency to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents thereof;

(14) To promote research and development in scientific methods of constructing low-cost residential housing of high durability;

(15) To service or contract for the servicing of mortgage loans and to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under this Chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Agency to facilitate the purposes of this Chapter;

(16) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money, including the proceeds of general obligation bonds of the State;

(17) To sue and be sued in its own name, plead and be impleaded;

(18) To establish and maintain an office for the transaction of its business in the City of Raleigh and at such place or places as the board of directors deems advisable or necessary in carrying out the purposes of this Chapter; provided, however, that the Agency shall comply with the provisions of Articles 6 and 7 of Chapter 146 of the General Statutes governing the acquisition of office space;

(19) To adopt an official seal and alter the same at pleasure;

(20) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(21) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency therefor;

(22) To purchase or to participate in the purchase and enter into commitments by itself or together with others for the purchase of federally insured securities; provided, however, that the Agency shall first determine that the proceeds of such securities will be utilized for the purpose of making new mortgage loans to sponsors of residential housing or to persons of lower income for residential housing, all as specified in regulations to be adopted by the Agency;

(23) To provide, or contract for the providing of, management and counseling services whenever, in the judgment of the Agency, no other satisfactory low-income housing counseling service is available for occupants of rental projects for persons of lower income or for prospective homeowners of lower income; provided, however, that no such program shall be undertaken until the Agency shall have made a study of its feasibility and shall have determined that the under-

taking of such program will not adversely affect other programs of the Agency;

(24) To advise the Governor regarding the coordination of public and private low- and moderate-income housing programs;

(25) To participate in and administer federal housing programs, including housing rehabilitation, construction of new housing, assistance to the homeless, and home ownership assistance;

(26) To acquire, hold, rent, encumber, transfer, convey, and otherwise deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The Board of Directors may pledge or encumber income and assets of the Agency to secure financing for real property; and

(27) To select and retain, subject to the approval of the Local Government Commission, the financial consultants, underwriters, and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed. (1969, c. 1235, s. 5; 1973, c. 1296, ss. 21-24, 27, 29, 35, 36, 40-43; 1975, c. 616, ss. 1, 2; 1981, c. 895, s. 3; 1983, c. 148, s. 2; 1993, c. 321, s. 305(b); 2008-194, s. 1(a); 2009-570, s. 15.)

Editor's Note. — The ending punctuation of certain subdivisions above has been made consistent at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-194, s. 1(a), effective August 8, 2008, added subdivisions (26) and (27), and made related changes.

Session Laws 2009-570, s. 15, effective August 28, 2009, deleted "and" at the end of subdivision (24).

CASE NOTES

Agency Is Not a Legislative Body. — The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) does not legislate but determines factually, by application of the factors the General Assembly has prescribed, what persons or families are persons and families of lower income and therefore entitled to the benefits of this Chapter. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Nor Is It Vested with Power of Eminent Domain. — The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) is not vested with the power of eminent domain. Rather, its function is to foster the planning, construction and financing of modest residences which would not otherwise be available to persons and families of lower income. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Public Purpose of Chapter. — This Chapter was enacted for a public purpose and the North Carolina Housing Corporation's (now the North Carolina Housing Finance Agency's) authorized activities pursuant thereto are for a public purpose. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Scope of Activities. — The North Carolina Housing Corporation's (now the North Carolina Housing Finance Agency's) authorized activities respond to a serious need of deep public concern but do so only when the planning, construction and financing of residential housing is not otherwise available to persons and families of lower income. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Function. — The evident function of the North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) created by this Chapter is to assist persons and families of lower income who desire and seek residential housing elsewhere than as tenants in a low-cost housing project. Such persons would include those who were or are ineligible to be tenants in a housing project. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The reason and justification for the Corporation's (now Agency's) existence is to make available decent, safe and sanitary housing to persons and families of lower income who cannot otherwise obtain such housing accommodations. Martin v. North Carolina Hous.

Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Discretion in Choice of Sites and Sponsor, Builder or Developer. — The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) must exercise its discretion and judgment with reference to the choice of sites and the identity of the sponsor, builder or developer with whom the Corporation (now Agency) will deal in connection with a particular project. It is contemplated that such sponsor, builder or developer will continue until completion of the program. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Applied in In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

§ 122A-5.1. Rules and regulations governing Agency activity.

(a) The Agency shall from time to time adopt, modify or repeal rules and regulations governing the purchase of federally insured securities by the Agency and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

(1) Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for the purchase of federally insured securities;

(2) Limitations or restrictions as to the number of family units, location or other qualifications or characteristics of residences to be financed by mortgage loans and requirements as to the income limits of persons and families of lower income occupying such residences;

(3) Restrictions as to the interest rates on mortgage loans or the return which may be realized by mortgage lenders on any mortgage loans or on the sale of federally insured securities to the Agency;

(4) Requirements as to commitments by mortgage lenders with respect to the use of the proceeds of sale of any federally insured securities;

(5) Schedules of any fees and charges necessary to provide for expenses and reserves of the Agency; and

(6) Any other matters related to the duties and the exercise of the powers of the Agency to purchase and sell mortgage loans, or to purchase federally insured securities.

Such rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford; (ii) the rehabilitation of present lower-income housing; (iii) increasing the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public action or natural disaster; (iv) the encouraging of private enterprise and investment to sponsor, build and rehabilitate residential housing for such persons and families to prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout the State; and (v) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

(b) The interest rate or rates and other terms of federally insured securities or mortgage loans purchased from the proceeds of any issue of bonds of the Agency shall be at least sufficient to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by the Agency in repayment of such federally insured securities or such loans and interest thereon.

(c) The Agency shall require as a condition of the purchase of federally insured securities from a mortgage lender and the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender where the Agency has not given its approval prior to the initial making of the mortgage loan that such mortgage lender shall on or prior to the one-hundred-eightieth day (or such earlier day as may be prescribed by rules and regulations of the Agency) following the receipt of the sale proceeds have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make from such sale proceeds, new mortgage loans with respect to residential housing in the State having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such sale proceeds. The Agency shall not purchase nor make commitment to purchase mortgage loans, federally insured securities or other obligations from a mortgage lender from which it has previously purchased federally insured securities or mortgage loans initially made without such prior approval unless said mortgage lender has either made or entered into written commitments to make such new mortgage loans. (1973, c. 1296, s. 44; 1975, c. 616, s. 3.)

§ 122A-5.2. Mortgage insurance authority.

(a) The Agency may upon application of a proposed mortgagee insure and make advance commitments to insure payments required by a loan for residential housing for persons of lower income upon such terms and conditions as the Agency may prescribe. Mortgage loans insured by the Agency under this Chapter may provide financing for related ancillary facilities to the extent permitted by applicable Agency regulations. Mortgage loans insured by the Agency under this Chapter shall be secured by a first mortgage.

The aggregate principal amount of all mortgages so insured by the Agency under this Chapter and outstanding at any one time shall not exceed 10 times the average annual balance for the preceding calendar year of funds on deposit in the housing mortgage insurance fund, the creation of which is hereby authorized. The aggregate amount of principal obligations of all mortgages so insured shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from moneys on deposit to the credit of the housing mortgage insurance fund. Any contract of insurance executed by the Agency under this section shall be conclusive evidence of eligibility for such mortgage insurance and the validity of any contract of insurance so executed or of an advance commitment to issue such shall be incontestable in the hands of a mortgagee from the date of execution of such contract or commitment, except for fraud or misrepresentation on the part of such mortgagee and, as to commitments to insure, noncompliance with the terms of the advance commitment or Agency regulations in force at the time of issuance of the advance commitment.

(b) For mortgage payments to be eligible for insurance under the provisions of this Chapter, the underlying mortgage loan shall:

(1) Be one which is made and held by a mortgagee approved by the Agency as responsible and able to service the mortgage properly;

(2) Not exceed (i) ninety percent (90%) of the estimated cost of the proposed housing if owned or to be owned by a profit-making sponsor or (ii) one hundred percent (100%) of the estimated cost of such proposed housing if owned or to be owned by a nonprofit housing sponsor or, if owned by a person or family of lower income, in the case of a single family dwelling or condominium;

(3) Have a maturity satisfactory to the Agency but in no case longer than eighty percent (80%) of the Corporation's [Agency's] estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier;

(4) Contain amortization provisions satisfactory to the Agency requiring periodic payments by the mortgagor not in excess of his ability to pay as determined by the Agency;

(5) Be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as the Agency may prescribe.

(c) All applications for mortgage insurance shall be forwarded, together with an application fee prescribed by the Agency, to the executive director of the Agency. The Agency shall cause an investigation of the proposed housing to be made, review the application and the report of the investigation, and approve or deny the application. No application shall be approved unless the Agency finds that it is consistent with the purposes of this Chapter and further finds that the financing plan for the proposed housing is sound. The Agency shall notify the applicant and the proposed lender of its decision. Any such approval shall be conditioned upon payment to the Agency, within such reasonable time and after notification of approval as may be specified by the Agency, of the commitment fee prescribed by the Agency.

(d) The Agency shall fix mortgage insurance premiums for the insurance of mortgage payments under the provision of this Chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one half of one percent (1/2 of 1%) per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by the Agency.

(e) In the event of default by the mortgagor, the mortgagee shall notify the Agency both of the default and the mortgagee's proposed course of action. When it appears feasible, the Agency may for a temporary period upon default or threatened default by the mortgagor authorize mortgage payments to be made by the Agency to the mortgagee which payments shall be repaid under such conditions as the Agency may prescribe. The Agency may also agree to revised terms of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon:

(1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the Agency by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to the Agency without recourse except such claims as may have been released with the consent of the Agency; or

(2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the Agency with an assignment, without recourse, to the Agency of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or

(3) The acceptance by the Agency of title to the property or an assignment of the mortgage, without recourse to the Agency, in the event the Agency determines it imprudent to proceed under (1) or (2) above.

Upon the occurrence of either (1), (2) or (3) hereof, the obligation of the mortgagee to pay premium charges for insurance shall cease, and the Agency shall, within 30 days thereafter, pay to the mortgagee ninety-eight percent (98%) of the sum of (i) the then unpaid principal balance of the insured indebtedness, (ii) the unpaid interest to the date of conveyance or assignment to the Agency, as the case may be, (iii) the amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments and mortgage insurance premiums, and (iv) such other necessary fees, costs or expenses of the mortgagee as may be approved by the Agency.

(f) Upon request of the mortgagee, the Agency may at any time, under such terms and conditions as it may prescribe, consent to the release of the mortgagor from his liability or consent to the release of parts of the property from the lien of the mortgage, or approve a substitute mortgagor or sale of the property or part thereof.

(g) No claim for the benefit of the insurance provided in this Chapter shall be accepted by the Agency except within one year after any sale or acquisition of title of the mortgaged premises described in subdivisions (1) or (2) of subsection (e) of this section.

(h) There shall be paid into the housing mortgage insurance fund (i) all premiums received by the Agency for the granting of such mortgage insurance, (ii) any moneys or other assets received by the Agency as a result of default or delinquency on mortgage loans insured by the Agency, including any proceeds from the sale or lease of real property, (iii) any moneys appropriated and made available by the State for the purpose of such fund. (1973, c. 1296, s. 45.)

§ 122A-5.3. Energy conservation loan authority.

(a) The Agency may guarantee the payment or collection of energy conservation loans pursuant to and in accordance with the provisions of this Chapter when the Agency has given its approval prior to the initial making of the loan; provided that any such guarantee shall be made only upon determination by the Agency that energy conservation loans were at the time of approval not otherwise available from private lenders upon reasonably equivalent terms and conditions; and provided further, no single guarantee of payment or collection shall exceed the sum of twelve hundred dollars ($1200) and no person or family of lower income shall be entitled to more than one loan guarantee.

(b) At no time may the Agency have outstanding loan guarantees in which the liability of the Agency exceeds 15 times any amounts remaining unspent from the specific funds appropriated by the General Assembly for the energy conservation loan guarantee program plus any specific grants or donations for this purpose; but the Agency is authorized to expend any unspent amounts from these sources to satisfy its liabilities under the loan guarantee program; provided no other assets of the Agency shall be obligated or expended in satisfaction of its energy conservation loan guarantee liability.

(c) The Agency shall from time to time adopt, modify, or repeal rules and regulations governing the guaranteeing of energy conservation loans including rules and regulations as to any or all of the following:

(1) Procedures for the submission and approval of requests to guarantee energy conservation loans including advance commitments by the Agency to guarantee loans;

(2) Limitations and restrictions on the number of family units, location or other qualifications or characteristics of residences in regard to which energy conservation work is performed to qualify for a loan guarantee;

(3) Restrictions as to interest rates on energy conservation loans or the return which may be realized by mortgage lenders on energy conservation loans guaranteed by the Agency;

(4) Schedules of any fees and charges necessary to provide for the administrative expenses of the Agency allocable to the administration of the energy conservation loan guarantee program;

(5) Procedures regarding the servicing of energy conservation loan guarantees including procedures for honoring defaults and procedures to be implemented to enforce the obligations of the borrowers to repay guaranteed energy conservation loans;

(6) Any other matters related to the duties and the exercise of the power of the Agency with respect to the energy conservation loan guarantee program deemed necessary to effectuate the purposes of this act. (1977, c. 1083, s. 3.)

§ 122A-5.4. Housing for persons and families of moderate income.

(a) The General Assembly hereby finds and determines that there is a serious shortage of decent, safe and sanitary housing which persons and families of moderate income in the State can afford; that it is in the best interests of the State to encourage home ownership by persons and families of moderate income; that the assistance provided by this section will enable persons and families of moderate income to acquire existing decent, safe and sanitary housing without undue financial hardship and will encourage private enterprise to sponsor, build and rehabilitate additional housing for such persons and families; and that the Agency in providing such assistance is promoting the health, welfare and prosperity of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) The terms "persons and families of lower income" and "persons of lower income" wherever they appear in this Chapter, except where they appear in G.S. 122A-2 and G.S. 122A-3, shall be deemed to include "persons and families of moderate income" as defined in clause (c) of this section.

(c) "Persons and families of moderate income" means persons and families deemed by the Agency to require the assistance made available by this Chapter on account of insufficient personal or family income taking into consideration, without limitation, (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available and (iv) the eligibility of such persons and families for federal housing assistance of any type predicated upon a moderate or low and moderate income basis. (1979, c. 810; 2008-107, s. 21.1(b).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 21.1(b), effective July 1, 2008, substituted "G.S. 122A-3" for "G.S. 122A-3(11)" in subsection (b).

CASE NOTES

This section was enacted for a public purpose, and is, therefore, a valid exercise of the State's power to tax under N.C. Const., Art. V, § 2. In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

The reason and justification for the Agency's existence is to make available decent, safe and sanitary housing to persons and families of lower income who cannot otherwise obtain such housing accommodations. In expanding the Agency's power to help those with moderate incomes, the legislature is acting with the same public purpose in mind. In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

In enacting this section the legislature has appropriately responded to the changing conditions in the residential housing market, and the benefits flowing from this section are benefits for the common good of all the people of the State. In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

§ 122A-5.5. Rehabilitation Loan Authority.

(a) In order to effectuate the authority of the Agency to participate in commitments to purchase and to purchase mortgage loans for the rehabilitation of existing residential housing the Agency is hereby empowered to adopt, modify or repeal rules and regulations governing the making or participation in the making of mortgage loans and the purchase or participation in commitments for the purchase of mortgage loans for the rehabilitation of existing residential housing.

(b) The rules and regulations of the Agency adopted pursuant to this section shall provide at a minimum that:

(1) Rehabilitation mortgage loans shall be for the purpose of owner-financed improvements to or renovation of residential housing;

(2) Requirements for eligibility for rehabilitation mortgage loans shall be consistent with all applicable federal laws and regulations governing bonds for rehabilitation mortgage loans in order to insure that such bonds are exempt from taxation. (1981, c. 344, s. 2.)

§ 122A-5.6. Terms and conditions of loans to and by mortgage lenders.

(a) The Agency shall from time to time adopt, modify, amend or repeal rules and regulations governing the making of loans to mortgage lenders and the application of the proceeds thereof. These rules and regulations shall be designed to effectuate the general purposes of this Chapter and the following specific objectives: (i) the construction and rehabilitation of decent, safe and sanitary residential housing available to persons and families of lower income and persons and families of moderate income at prices or rentals that they can afford; (ii) the encouragement of private enterprise and investment to sponsor, build and rehabilitate residential housing for persons and families of lower income and persons and families of moderate income; and (iii) the restriction of the financial return and benefit to the mortgage lenders from such loans to an amount that is necessary to induce their participation and that is not excessive as determined by prevailing market conditions.

(b) Notwithstanding any other provision of this section, the interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the Agency shall provide that the amounts received by the Agency in repayment of the loans and interest thereon shall be at least sufficient to assure the payment of the principal of and the interest on the bonds as they become due.

(c) The Agency shall enter into a written agreement with each mortgage lender that shall require as a condition of each loan to such mortgage lender that the mortgage lender shall originate new mortgage loans within a reasonable period of time as determined by the Agency's rules and regulations and that such new mortgage loans shall have such stated maturities as determined by the Agency's rules and regulations.

(d) The loans to mortgage lenders shall be general obligations of the respective mortgage lenders owing them. The Agency shall require that such loans shall be additionally secured as to payment of both principal and interest by a pledge and lien upon collateral security. The collateral security itself shall be in such amount as the Agency determines will assure the payment of the principal of and the interest on the bonds as they become due. Collateral security shall be deemed to be sufficient if the principal of and the interest on the collateral security, when due, will be sufficient to pay the principal of and the interest on the bonds. The collateral security shall consist of any of the following items: (i) direct obligations of, or obligations guaranteed by, the State or the United States of America; (ii) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the Agency, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, Fannie Mae or the Government National Mortgage Association; (iii) direct obligations of or obligations guaranteed by the State; (iv) mortgages insured or guaranteed by the United States of America or an instrumentality of it as to payment of principal and interest; (v) any other mortgages secured by real estate on which there is located a residential structure, the collateral value of which shall be determined by the regulations issued from time to time by the Agency; (vi) obligations of Federal Home Loan Banks; (vii) certificates of deposit of banks or trust companies, including the trustee, organized under the laws of the United States or any state, which have a combined capital and surplus of at least fifteen million dollars ($15,000,000); (viii) Bankers Acceptances; and (ix) commercial paper that has been classified for rating purposes by Dun & Bradstreet, Inc., as Prime-1 or by Standard & Poor's Corp. as A-1.

(e) The Agency may require as a condition of any loan to a mortgage lender such representations and warranties that it determines to be necessary to secure such loans and to carry out the purposes of this section. (1983, c. 148, s. 3; 2001-487, s. 14(i).)

§ 122A-5.7. Homeownership Assistance Fund authorized; authority.

The North Carolina Housing Finance Agency is authorized to establish a Homeownership Assistance Fund (hereinafter referred to as "the Fund") to assist families of low and moderate income in the purchase of affordable residential housing. To achieve this purpose, the Agency may use the Fund to provide additional security for eligible loans, to subsidize down payments, principal payments and interest payments, and to provide any type of mortgage assistance the Agency deems necessary. The Fund shall operate as a revolving fund. The Agency shall adopt rules for the operation and use of the Fund. These funds shall be used for people who otherwise would be unable to receive subsidized loans from the Housing Finance Agency. (1983, c. 923, s. 203.)

§ 122A-5.8. Distressed multi-family residential rental housing provisions.

(a) The General Assembly hereby finds and determines that a serious shortage of decent, safe and sanitary multi-family residential rental housing which persons and families of low and moderate income in the State can afford continues to exist; that it is in the best interests of the State to continue to promote and maintain the viability of such housing and to encourage private enterprise to sponsor, build and rehabilitate additional multi-family residential rental housing for such low and moderate income persons and families; that certain multi-family residential rental housing projects financed by the Agency are currently experiencing financial difficulties due to low occupancy levels; that measures to facilitate higher occupancy levels by extending occupancy on a temporary basis to those with incomes in excess of required low and moderate levels will help to maintain certain multi-family residential rental housing for persons and families of low and moderate income to prevent foreclosure and the use of such facilities without regard to income limitations; and that the Agency in providing such temporary assistance is promoting the health, welfare and property of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) "Distressed rental housing project" means any multi-family residential rental housing project heretofore or hereafter financed by the Agency that, as determined by resolution of the Board of Directors of the Agency, has an occupancy level below that required for sustaining operation and as a result thereof needs to increase its occupancy levels in order to avoid foreclosure and the subsequent use of such facilities without regard to the Agency's income limitations. In determining the foregoing, the Board of Directors of the Agency shall take into consideration (1) occupancy rates of the project, (2) market conditions affecting the project, (3) costs of operation of the project, (4) debt service for the project, (5) management of the project and such other factors as the Board of Directors may deem relevant.

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the project's occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default.

(d) The Board of Directors may also determine, by resolution, to permit additional rental units at any such distressed rental housing project, to be rented to persons or families without regard to income, subject to the restriction contained in subsection (c) of this section, provided that: (1) the units therein that have been available for rental without regard to income have been available for a period of time not less than three months, (2) the Agency has determined that permitting additional units, in excess of ten percent (10%), to be rented without regard to income is necessary in order for such distressed rental housing project to avoid foreclosure, and (3) the total number of housing units at any distressed rental housing project rented without regard to income shall not exceed fifteen percent (15%) of the total number of units therein.

(e) Once a distressed rental housing project attains sustaining occupancy at a level satisfactory to the Agency, the Agency will thereafter require the owners of such distressed rental housing project to rent only to persons and families of low and moderate income and will require that any units that were leased without regard to income limitations pursuant to the provisions of this section will next be leased, when such units become vacant, only to persons and families whose incomes fall within the then current Agency income limitations. (1987, c. 305, s. 1; 1989, c. 454, ss. 1-3; 1989, c. 454, s. 3.)

§ 122A-5.9. Formation of subsidiary corporations to own and operate housing projects.

(a) The Agency may acquire, by purchase or otherwise, construct, acquire, develop, own, repair, maintain, improve, rehabilitate, renovate, furnish, equip, operate, and manage residential rental housing projects to rent to persons and families of lower and moderate income.

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

(c) No statutory provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the Agency or to any nonprofit corporation formed pursuant to this section. (1987, c. 305, s. 2.)

§ 122A-5.10. Housing Coordination and Policy Council; creation; duties.

(a) There is created the Housing Coordination and Policy Council in the Office of the Governor. The Housing Coordination and Policy Council shall have the following functions and duties:

(1) To advise the Governor regarding the coordination of various public and private low- and moderate-income housing programs;

(2) To advise the Governor in the preparation of an overall, comprehensive State housing plan with specific recommendations to address identified areas of need, which report shall be presented to the General Assembly;

(3) To advise the Governor with respect to the best use of housing resources; and

(4) To advise the Governor regarding any other matter relating to housing the Governor may refer to it.

(b) Nothing herein shall abrogate the existing statutory responsibility of any other agency to develop housing plans and policies relating to specific housing programs. (1993, c. 321, s. 305(d).)

§ 122A-5.11. Council membership; compensation; procedures.

(a) The Housing Coordination and Policy Council shall consist of 15 representatives, as follows:

(1) One member of the N.C. Housing Partnership who is experienced with housing programs for low-income persons, as designated by the chair.

(2) One member of the Community Development Council who is experienced with federal, State, and local housing programs, as designated by the chair.

(3) One member of the N.C. Housing Finance Agency Board of Directors who is experienced with real estate finance and development, as designated by the chair.

(4) One member of the Weatherization Policy Advisory Council who is experienced with community weatherization programs, as designated by the chair.

(5) One member of the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402, who is familiar with the housing needs of the disabled.

(6) The executive director of the Commission of Indian Affairs, or a designee familiar with Indian housing programs.

(7) The Assistant Secretary of Community Development and Housing, or a designee familiar with housing programs related to community development and housing functions.

(8) The director of the Division of Aging, or a designee familiar with the housing programs of the Division.

(9) The executive director of the N.C. Housing Finance Agency, or a designee familiar with the housing programs of the Agency.

(10) The director of the Division of Mental Health, or a designee familiar with housing for those with mental disabilities.

(11) The executive director of the N.C. Human Relations Commission, or a designee familiar with federal and State fair housing laws.

(12) The head of the AIDS Care Branch, or a designee familiar with the housing programs of the Division of Adult Health Promotion.

(13) The director of the Office of Economic Opportunity, or a designee familiar with programs for the homeless.

(14) Two members of nonprofit organizations who are experienced with housing advocacy for low-income persons and State and federal housing programs.

(b) All members except those serving ex officio shall be appointed by the Governor. The Governor shall designate one member of the Council to serve as Chair.

(c) The initial members of the Council other than those serving ex officio shall be appointed to serve for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy created by resignation, dismissal, death, or disability of a member shall be for the balance of the term.

(d) Members of the Council may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) A majority of the Council shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the Council shall be supplied by the Housing Finance Agency. (1993, c. 321, s. 305(d); 1995, c. 263, s. 1; 2007-323, s. 19.1(d).)

Editor's Note. — Session Laws 2007-323, s. 19.1(b), provides: "Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Governor shall redesignate the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity. The Governor shall follow the federal statutory procedure for redesignation found at 45 C.F.R. § 1386.20, with a target transfer date of July 1, 2007."

Session Laws 2007-323, s. 19.1(*l*), provides: "This section is effective on the effective date of the redesignation and transfer of the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402. Any funds appropriated to the Governor's Advocacy Council for Persons with Disabilities revert to the General Fund on that date." The redesignation and transfer were effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 122A-5.12. Council meetings; report.

(a) The Housing Coordination and Policy Council shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the Chair or upon written request of a majority of the members.

(b) The Council shall assist in the preparation and filing of an annual written report which contains a review of work completed, a review of ongoing activities, and housing policy recommendations. This report shall be filed with the General Assembly and the Governor by May 1. (1993, c. 321, s. 305(d).)

§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.

(a) The North Carolina Housing Finance Agency shall establish an Adult Care Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter "Fire Protection Fund") to assist owners of adult care homes, group homes for developmentally disabled adults, and nursing homes with the purchase and installation of fire protection systems and emergency generators in existing and new adult care homes, group homes for developmentally disabled adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

(b) The Agency, in consultation with the Department of Health and Human Services, shall adopt rules for the management and use of the Fire Protection Fund. These rules at a minimum shall provide for the following:

(1) Financial incentives for owners of facilities who utilize Fire Protection Fund monies to install sprinkler systems instead of smoke detection equipment.
(2) Maximum loan amounts of one dollar and seventy-five cents ($1.75) per square foot for advanced smoke detectors and digital communication equipment, three dollars and seventy-five cents ($3.75) per square foot for residential sprinkler systems, and six dollars ($6.00) per square foot for institutional sprinkler systems.
(3) Interest rates from three percent (3%) to six percent (6%) for a period not to exceed 20 years for sprinkler systems and 10 years for smoke detection systems.
(4) Documentary verification that owners of facilities obtain fire protection systems and emergency generators at a reasonable cost.
(5) Acceleration of a loan when statutory fire protection requirements are not met by the facility for which the loan was made.
(6) Loan approval priority criteria that considers the frailty level of residents at a facility.
(7) Loan origination and servicing fees.

(c) Proceeds from the Fire Protection Fund, not to exceed ten thousand dollars ($10,000) annually, may be used to provide staff support to the North Carolina Housing Finance Agency for loan processing under this section and to the Department of Health and Human Services for review and approval of fire protection plans and inspection of fire protection systems. (1996, 2nd Ex. Sess., c. 18, s. 24.26B(a); 1997-443, s. 11A.118(a); 1999-237, s. 11.17; 2000-67, s. 11.10.)

§ 122A-5.14. Home Protection Program and Fund.

(a) The North Carolina Housing Finance Agency shall establish and administer the Home Protection Program ("Program") to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

(1) Develop and administer the Home Protection Program Fund ("Fund") to ensure that workers in North Carolina have assistance to avoid losing their homes to foreclosure.
(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.
(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.
(4) Designate, approve, and fund nonprofit counseling agencies in North Carolina to be available to assist the Agency in implementing the provisions of this section, provide services such as direct mortgagee negotiations on behalf of unemployed workers, and process loan applications for the Agency.
(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

(b) Home Protection Period. — Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following for a period of 120 days following the date of the mortgagor's properly filed application:

(1) Accelerate the maturity of any mortgage obligation covered under this section.
(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.
(3) Take possession of any security of the mortgagor for the mortgage obligation.
(4) Procure or receive a deed in lieu of foreclosure.
(5) Enter judgment by confession pursuant to a note accompanying a mortgage.
(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within 10 business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

(c) Rule Making. — Solely with respect to the adoption of procedures for the program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.
(2) Accept oral and written comments on the proposed procedures.
(3) Hold at least one public hearing on the proposed procedures.

(d) Annual Report. — By April 1 of each year, the Agency shall report to the House Appropriations Subcommittee on General Government and Senate Appropriations Subcommittee on General Government and Information Technology on the effectiveness of the Program in accomplishing its purposes and provide any other information the Agency determines is pertinent or that the General Assembly requests. (2008-107, s. 21.1(c).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 122A-6. Credit of State not pledged.

Obligations issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues or assets of the Agency. Each obligation issued under this Chapter shall contain on the face thereof a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

Expenses incurred by the Agency in carrying out the provisions of this Chapter may be made payable from funds provided pursuant to this Chapter and no liability shall be incurred by the Agency hereunder beyond the extent to which moneys shall have been so provided. Provided the provisions of this section do not apply to the liability of the Agency with respect to energy conservation loan guarantees. (1969, c. 1235, s. 6; 1973, c. 1296, s. 46; 1977, c. 1083, s. 4.)

CASE NOTES

The method of financing set forth in this section does not create a debt within the meaning of the Constitution and therefore the limitations of former N.C. Const., Art. V, § 3 (see now N.C. Const., Art. V, § 2) are inapplicable. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

The North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) has no authority to incur any debt which would obligate the General Assembly to make appropriations. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 122A-6.1. Credit of State not pledged to satisfy liabilities under energy conservation loan guarantees.

Energy conservation loan guarantees issued under the provisions of this Chapter shall not be deemed to constitute a debt, liability, obligation of the State or of any political subdivision thereof, or a pledge of the faith and credit of the State or of any political subdivision thereof, but shall be payable solely from any unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any donations and grants for this specific purpose. Each guarantee issued by the Agency shall contain on its face a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the unspent specific appropriations by the General Assembly for the energy conservation loan guarantee program and any specific donations and grants for this purpose, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such guarantees.

Provided any recoveries from the borrower or others which ultimately reduce the amounts paid out by the Agency in satisfaction of its liabilities under the energy conservation loan guarantee program shall be deemed unspent appropriations, donations or grants. (1977, c. 1083, s. 5.)

§ 122A-7: Repealed by Session Laws 1973, c. 1296, s. 47.

§ 122A-8. Bonds and notes.

The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of bonds and notes of the Agency to carry out and effectuate its corporate purposes. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing. The total amount of bonds, bond anticipation notes, and construction loan notes outstanding at any one time shall not exceed three billion dollars ($3,000,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 43 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter, as long as the sale is approved by the Agency.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. (1969, c. 1235, s. 8; 1973, c. 1296, s. 48; 1979, c. 844; 1979, 2nd Sess., c. 1238,

s. 2; 1981, c. 343; 1983 (Reg. Sess., 1984), c. 1062, s. 2; 1985, c. 769, s. 2; 1997-13, s. 1; 2001-185, s. 1.)

CASE NOTES

Applied in In re Denial of Approval to Issue Hous. Bonds, 307 N.C. 52, 296 S.E.2d 281 (1982).

Cited in Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 122A-8.1: Repealed by Session Laws 2008-194, s. 1(b), effective August 8, 2008.

§ 122A-9. Trust agreement or resolution.

In the discretion of the Agency any obligations issued under the provisions of this Chapter may be secured by a trust agreement by and between the Agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the Agency, including, without limitation, mortgage loans, mortgage loan commitments, contracts, agreements and other security or investment obligations, the fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon and any other moneys received or to be received by the Agency. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Agency in relation to the purposes to which obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the Agency, the terms and conditions for the issuance of additional obligations, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of obligations, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Agency. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any obligations and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the Agency. (1969, c. 1235, s. 9; 1973, c. 1296, s. 49.)

§ 122A-10. Validity of any pledge.

The pledge of any assets or revenues of the Agency to the payment of the principal of or the interest on any obligations of the Agency shall be valid and binding from the time when the pledge is made and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the Agency from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations. (1969, c. 1235, s. 10; 1973, c. 1296, s. 50.)

§ 122A-11. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide.

Any moneys received pursuant to the authority of this Chapter and any other moneys available to the Agency for investment may be invested:

(1) As provided in G.S. 159-30, except that for purposes of G.S. 159-30(b) the Agency may deposit moneys at interest in banks or trust companies outside as well as in this State, as long as any moneys at deposit outside this State are collateralized to the same extent and manner as if at deposit in this State;

(2) In evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state in the capacity of custodian;

(3) In obligations which are collateralized by mortgage pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae;

(4) In a trust certificate or similar instrument evidencing an equity investment in a trust or other similar arrangement which is formed for the purpose of issuing obligations which are collateralized by mortgage pass-through or participation certificates guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or Fannie Mae; and

(5) In repurchase agreements with respect to (i) direct obligations of the United States government, (ii) obligations the principal of and the interest on which are guaranteed by the United States government, or (iii) obligations described in G.S. 159-30(c)(2), (3), (6), or (7), if all of the following conditions are met:

a. The repurchase agreement is entered into with an institution whose ability to pay its unsecured long-term obligations (including, if the institution is an insurance company, its claims paying ability) is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the term of the repurchase agreement is for a period of one year or less, however, the repurchase agreement may be entered into with an institution that does not have such a long-term rating if its ability to pay its unsecured short-term obligations is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the institution with which the agreement is to be entered does not meet the ratings requirement of this subparagraph, the repurchase agreement may nevertheless be entered into with the institution if the obligations of the institution under the repurchase agreement are fully guaranteed by another institution that does meet the ratings requirement of this subparagraph.

b. The repurchase agreement provides that it shall be terminated, without penalty, if the institution with which the repurchase agreement is entered or by whom the institution's obligations are guaranteed fails to maintain (i) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's long-term obligations, a rating of its long-term obligations in one of the three highest ratings categories by at least one nationally recognized securities rating agency, or (ii) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's short-term obligations, a rating of its short-term obligations in one of the two highest ratings categories by at least one nationally recognized securities rating agency. The repurchase agreement does not have to be terminated, however, if a new guarantor meeting the rating requirement set forth in subparagraph a. as the requirement necessary for the Agency to enter the repurchase agreement agrees to fully guarantee the obligations of the institution under the repurchase agreement.

c. The obligations that are subject to the repurchase agreement are delivered (in physical or in book entry form) to the Agency, or any financial institution serving either as trustee for obligations issued by the Agency or as fiscal agent for the Agency or the State Treasurer or are supported by a safekeeping receipt issued by a depository satisfactory to the Agency. The repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price. The financial institution serving either as trustee or as fiscal agent for the Agency holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement.

d. A valid and perfected first security interest in the obligations which are the subject of the repurchase agreement has been granted to the Agency or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the agency have been established for the benefit of the Agency or its assignee.

e. The securities are free and clear of any adverse third-party claims.

f. The repurchase agreement is in a form satisfactory to the Agency.

(1969, c. 1235, s. 11; 1973, c. 1296, s. 51; 1985, c. 479, s. 149(b); 1985 (Reg. Sess., 1986), c. 1014, s. 185; 1997-13, s. 2; 2001-181, s. 1.)

§ 122A-12. Remedies.

Any holder of obligations issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such obligations, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by the Agency or by any officer thereof. (1969, c. 1235, s. 12; 1973, c. 1296, s. 52.)

§ 122A-13. Negotiable instruments.

Notwithstanding any of the foregoing provisions of this Chapter or any recitals in any obligations issued under the provisions of this Chapter, all such obligations and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State, subject only to any applicable provisions for registration. (1969, c. 1235, s. 13.)

§ 122A-14. Obligations eligible for investment.

Obligations issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1969, c. 1235, s. 14.)

§ 122A-15. Refunding obligations.

The Agency is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Agency, for any corporate purpose of the Agency. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Agency in respect of the same shall be governed by the provisions of this Chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1965, c. 1235, s. 15; 1973, c. 1296, s. 55.)

§ 122A-16. Oversight by committees of General Assembly; annual reports.

The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the Office of State Budget and Management, State Auditor, the aforementioned committees of the General Assembly and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations. (1969, c. 1235, s. 16; 1973, c. 1296, s. 56; 1977, c. 673, s. 3; c. 771, s. 4; 1981, c. 895, s. 4; 1981 (Reg. Sess., 1982), c. 1191, s. 34; 1983 (Reg. Sess., 1984), c. 1034, s. 134; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 67.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2006-203, s. 67, effective July 1, 2007, and applicable to the budget for the 2007-2009 biennium and each subsequent biennium thereafter, deleted "the Advisory Budget Commission" following "General Assembly" in the second sentence.

§ 122A-17. Officers not liable.

No member or other officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (1969, c. 1235, s. 17; 1973, c. 1296, s. 57.)

§ 122A-18. Authorization to accept appropriated moneys.

The Agency is authorized to accept such moneys as may be appropriated from time to time by the General Assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the Agency. (1969, c. 1235, s. 18; 1973, c. 1296, s. 58.)

CASE NOTES

Appropriations for Reserve Fund Not a Pledge of Faith and Credit of State or Subdivisions. — The fact that such appropriations as the General Assembly may see fit to make may be used for the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the North Carolina Housing Corporation (now the North Carolina Housing Finance Agency) does not constitute a pledge of the faith and credit of the State or of any political subdivision thereof for the payment of the principal of and the interest on any bonds or notes of the Corporation (now Agency). Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 122A-19. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Agency shall not be required to pay any tax or assessment on any property owned by the Agency under the provisions of this Chapter or upon the income therefrom.

Any obligations issued by the Agency under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1969, c. 1235, s. 19; 1973, c. 1296, s. 59; 1995, c. 46, s. 10.)

CASE NOTES

Property and Obligations of Agency May Be Exempted from Taxation. — Since this Chapter and the North Carolina Housing Corporation's (now the North Carolina Housing Finance Agency's) activities pursuant thereto are for a public purpose, it is permissible for the General Assembly to exempt from taxation the property of the Corporation (now Agency) and the obligations incurred by the Corporation (now Agency) to effectuate such public purpose. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

§ 122A-20. Conflict of interest.

If any member, officer or employee of the Agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the Agency, including any loan to any sponsor, builder or developer, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency, and the member, officer or employee having such interest therein shall not participate on behalf of the Agency in the authorization of any such contract. (1969, c. 1235, s. 20; 1973, c. 1296, s. 60.)

§ 122A-21. Additional method.

The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1969, c. 1235, s. 21.)

§ 122A-22. Chapter liberally construed.

This Chapter, being necessary for the prosperity of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1969, c. 1235, s. 22.)

§ 122A-23. Inconsistent laws inapplicable.

Insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Chapter shall be controlling. (1969, c. 1235, s. 24.)

Chapter 122B.

North Carolina Agricultural Facilities Finance Act.

§§ 122B-1 through 122B-29: Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(a).

Cross References. — For present provisions as to agricultural finance, see Chapter 122D.

Editor's Note. — Repealed G.S. 122B-5 was amended by Session Laws 1985, c. 583, s. 2.

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

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General Provisions.

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122C-1. Short title.
122C-2. Policy.
122C-3. Definitions.
122C-4. Use of phrase "client or his legally responsible person."
122C-5. Report on restraint and seclusion.
122C-6. Smoking prohibited; penalty.
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Article 1A.

MH/DD/SA Consumer Advocacy Program.

122C-10. (This article has a contingent effective date — see note) MH/DD/SA Consumer Advocacy Program.
122C-11. (This article has a contingent effective date — see notes) MH/DD/SA Consumer Advocacy Program/definitions.
122C-12. (This article has a contingent effective date — see note) State MH/DD/SA Consumer Advocacy Program.
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122C-14. (This article has a contingent effective date — see note) Local Consumer Advocate; duties.
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122C-16. (This article has a contingent effective date — see note) State/Local Consumer Advocate; resolution of complaints.
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Article 3.

Clients' Rights and Advance Instruction.

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122C-61. Treatment rights in 24-hour facilities.
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122C-63. Assurance for continuity of care for individuals with mental retardation.

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122C-64. Client rights and human rights committees.
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122C-68 through 122C-70. [Reserved.]

Part 2. Advance Instruction for Mental Health Treatment.

122C-71. Purpose.
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122C-115.3. Dissolution of area authority.
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Article 5.

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122C-202.1. Hospital privileges.
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Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for the Mentally Ill and Substance Abusers.

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Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities for Individuals with Developmental Disabilities.

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Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

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Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

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ARTICLE 1.

General Provisions.

§ 122C-1. Short title.

This Chapter may be cited as the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985. (1985, c. 589, s. 2; 1989, c. 625, ss. 1, 2.)

Cross References. — See the editor's notes under G.S. 122C-22 referring to Session Laws 1999-237, ss. 18.8(a) through 18.8(c) regarding facility exemptions from licensure and certificate of need. For exception from licensure under this chapter of inpatient chemical dependency or substance abuse facilities that provide service exclusively to inmates of the Department of Correction, see G.S. 148-19.1. As to reports to Committee, see G.S. 120-243. As to establishment of the School-Based Child and Family Team Initiative, see G.S. 143B-366.

Study — Issues Related to Mentally Ill Residents of Long-Term Care Facilities. — Session Laws 2004-124, ss. 10.2(a) and (b), provide: "(a) The Department of Health and Human Services shall work with long-term care providers and advocates for the elderly and the mentally ill to study issues concerning the care of mentally ill individuals residing in long-term care facilities. The study shall include:

"(1) Examining whether current State statutes and Departmental rules adequately address the populations served by long-term care facilities.

"(2) Exploring the development of separate licensure categories within the adult care home and nursing home designations to address the various populations being served.

"(3) Examining adult care home rules to determine whether they are easy to understand, attainable under current staffing patterns, give appropriate guidance to facility operators according to the needs and characteristics of residents served, support residents' freedom of choice, and whether they support the autonomy, dignity, and independence philosophy of assisted living.

"(4) Determining the most effective way to identify mentally ill individuals that have mental health treatment needs.

"(5) Examining the criteria for admission of mentally ill individuals to long-term care facilities to ensure that the health and safety of all residents are safeguarded.

"(6) Providing recommendations for improving the quality of care for mentally ill individuals in adult care homes and nursing homes including the potential cost associated with implementing the recommendations.

"(7) Identifying specific problems that exist due to mixing aging and mentally ill populations.

"(b) The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging by October 1, 2005. The Department of Health and Human Services shall include in this report how it defines 'mentally ill' for purposes of this study."

Mental Health Treatment Courts — Pilot Program. — Session Laws 2004-124, ss. 10.27(a)-(f), provides: "(a) The Administrative Office of the Courts shall establish pilot programs in judicial districts 15B, 26, and 28 that add a mental health treatment component to the existing drug treatment courts in those districts, thereby expanding those courts into therapeutic court programs aimed at providing treatment to repeat adult offenders with needs for either mental health or substance abuse services. The purpose of the mental health treatment component of the pilot programs is to facilitate cooperation between the State mental health system, mental health service providers, and the judicial system in order for the State mental health system to provide repeat adult offenders that need mental health services with treatment and other mental health services aimed at improving their ability to function in the community, thereby reducing recidivism and easing the workload of the courts.

"In expanding the drug treatment courts in these districts into therapeutic courts under this section, the Administrative Office of the Courts and the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall collaborate on a plan for the structure of the court process, treatment services provided by area authorities or county programs and other appropriate mental health service providers, and administration of the pilot programs. Treatment services provided under the mental health treatment court component shall use best treatment practices approved by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The collaborative effort required under this section shall also include consideration of the effectiveness and efficiency of the mental health treatment court component to determine feasibility of the statewide expansion of drug treatment courts into therapeutic courts.

"(b) The Administrative Office of the Courts shall report to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Subcommittees on Health and Human Services by March 1, 2005, on the implementation of the therapeutic treatment court pilot programs provided for in this section, including an evaluation of the effectiveness of the new mental health treatment component of those programs and recommendations on the feasibility and desirability of expanding the existing drug treatment court program into a statewide therapeutic court program.

"(c) There is appropriated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to the Judicial Department the sum of thirty-six thousand one hundred sixty-one dollars ($36,161) for the 2004-2005 fiscal year. These funds shall be used for administrative costs associated with expanding the Drug Treatment Court to serve adult repeat offenders who are within the targeted population for mental health, developmental disabilities, and substance abuse services as defined in G.S. 122C-3(38).

"(d) There is appropriated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one hundred thirty-seven thousand nine hundred forty dollars ($137,940) for the 2004-2005 fiscal year. These funds shall be used for mental health treatment services to repeat adult offenders within the targeted population for mental health, developmental disabilities, and substance abuse services as defined in G.S. 122C-3(38).

"(e) Of the funds appropriated in this act to the Judicial Department, the sum of twenty thousand dollars ($20,000) for the 2004-2005 fiscal year shall be used to obtain an independent evaluation of the effectiveness of the pilot programs authorized under this section.

"(f) A county may appropriate county or other non-State funds to expand mental health services to adult repeat offenders served by the pilot programs for mental health treatment established under subsection (a) of this section. No State funds appropriated for this section shall be used to provide mental health services to nontargeted population adult repeat offenders."

Editor's Note. — For comparable sections of repealed Chapter 122 and new Chapter 122C, see the table at the end of Chapter 122C.

Session Laws 2002-126, s. 10.24(a), (b), provides: "(a) In order to ensure that individuals receive effective substance abuse prevention services, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these individuals:

"(1) Designate an Office of Substance Abuse Prevention within the Department as outlined in the North Carolina Comprehensive Strategic Plan for Substance Abuse Prevention. This Office shall be responsible for the implementation of the goals in the Comprehensive Strategic Plan for Substance Abuse Prevention. The Office shall also maintain the Interagency Agreement for Substance Abuse Prevention Services and ensure continuing collaboration between agencies that are parties to the Agreement.

"(2) Provide only those prevention services that are evidenced-based and have been determined to be effective in preventing alcohol and other drug problems.

"(3) Propose rules for the licensure of prevention programs to ensure quality of service delivery in local communities. Rules shall be subject to review and adoption by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(4) Ensure that services are provided by qualified prevention professionals.

"(5) Implement an outcome-based system utilizing standard risk assessments and data elements consistent with appropriate evaluation of prevention programs.

"(b) The Department shall report on its activities under this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and

Human Services, and the Fiscal Research Division not later than December 1, 2002."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2005-371, s. 1, provides: "The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a central listing of mental health facilities designated for the placement of individuals to be involuntarily committed to assist law enforcement officers and others. The list shall be developed from existing funds appropriated to the Department. The listing shall be accessible on the Internet and implemented not later than October 1, 2005. The Department shall report on the implementation of the listing and the status and compliance of area authorities' crisis response service to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than March 1, 2006."

Session Laws 2009-574, s. 15.1, provides: "The Department of Health and Human Services, Division of Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while conducting the study."

Session Laws 2009-574, s. 15.2, provides: "The Department may report findings and recommendations on the feasibility of conducting drug tests for long-term care facility employment applicants and employees to the North Carolina Study Commission on Aging on or before October 1, 2010."

Session Laws 2009-574, s. 19.1, provides: "The North Carolina Institute of Medicine (NCIOM) may convene a Task Force to study the adequacy of mental health, developmental disabilities, and substance abuse services funded with Medicaid funds and with State funds that are currently available to active, reserve, and National Guard members of the military, veterans of the military, and their families, and the need for increased State services to these individuals."

Session Laws 2009-574, s. 19.2, provides: "The Department of Health and Human Services may cooperate with NCIOM and the Task Force and provide the data necessary for the Task Force to conduct its study."

Session Laws 2009-574, s. 19.3, provides: "The membership of the Task Force may include members of the North Carolina General Assembly. Senate members may be appointed by the President Pro Tempore of the Senate. House members may be appointed by the Speaker of the House of Representatives. Members of the General Assembly serving on the Task Force may be entitled to receive per diem, subsistence, and travel allowances as provided by G.S. 120-3.1."

Session Laws 2009-574, s. 19.4, provides: "NCIOM may report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

CASE NOTES

Personal Jurisdiction in Molestation by Foster Child Case. — Where defendants raised the issues of failure to state a claim and lack of subject matter jurisdiction, but failed to raise the issue of personal jurisdiction, and stipulated in the record before the appellate court that they were properly before the trial court, the defendants could not argue that they were not subject to suit under Chapter 108A, G.S. 153A-77, and this section. Hobbs v. North Carolina Dep't of Human Resources, 135 N.C. App. 412, 520 S.E.2d 595, 1999 N.C. App. LEXIS 1146 (1999).

Request for Instruction. — Denial of defendant's request for a modified jury instruction regarding post-verdict commitment procedures after a verdict of not guilty by reason of insanity was not erroneous because the trial court properly instructed the jury on the "central meaning of the statute," and its instruction substantially complied with defendant's request. State v. Hall, 187 N.C. App. 308, 653 S.E.2d 200, 2007 N.C. App. LEXIS 2453 (2007), review denied, appeal dismissed, 362 N.C. 366, 663 S.E.2d 431 (N.C. 2008).

Cited in Sumblin v. Craven County Hosp.

Corp., 86 N.C. App. 358, 357 S.E.2d 376 (1987); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 122C-2. Policy.

The policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life. It is further the obligation of State and local government to provide community-based services when such services are appropriate, unopposed by the affected individuals, and can be reasonably accommodated within available resources and taking into account the needs of other persons for mental health, developmental disabilities, and substance abuse services.

State and local governments shall develop and maintain a unified system of services centered in area authorities or county programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector. Within available resources, State and local government shall ensure that the following core services are available:

(1) Screening, assessment, and referral.
(2) Emergency services.
(3) Service coordination.
(4) Consultation, prevention, and education.

Within available resources, the State shall provide funding to support services to targeted populations, except that the State and counties shall provide matching funds for entitlement program services as required by law.

As used in this Chapter, the phrase "within available resources" means State funds appropriated and non-State funds and other resources appropriated, allocated or otherwise made available for mental health, developmental disabilities, and substance abuse services.

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; c. 771; 1989, c. 625, s. 2; 2001-437, s. 1.1.)

Editor's Note. — The preamble to Session Laws 2001-437 reads:

"Whereas, the 1999 General Assembly, Regular Session 2000, established the Joint Legislative Oversight Committee ("Committee") on Mental Health, Developmental Disabilities, and Substance Abuse Services; and

"Whereas, the Committee was directed to develop a Plan for Mental Health System Reform; and Whereas, the General Assembly expressed the intent that the Plan be fully implemented not later than July 1, 2005; and

"Whereas, the General Assembly directed the Committee to 'Report to the 2001 General Assembly upon its convening the changes that should be made to the governance, structure, and financing of the State's mental health system at the State and local levels'; and

"Whereas, the Committee reviewed the governance, structure, and financing of the current mental health system and reported its findings and recommendations to the 2001 General Assembly for legislative action;

"Now, therefore, The General Assembly of North Carolina enacts:"

Session Laws 2006-66, s. 10.26(a) through (f), as amended by Session Laws 2006-221, s. 11, and as amended by Session Laws 2007-323, s. 10.49(n), provides: "(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five million two hundred fifty thousand dollars ($5,250,000) for the 2006-2007 fiscal year shall be allocated on a per capita basis and shall be used by area authorities and county programs for operational start-up, capital, or subsidies related to the development and implementation of a plan for a continuum of regional crisis facilities and local crisis services ('crisis plan'). Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this section. As used in this section, the term 'crisis' includes services for individuals with mental illnesses, developmental disabilities, and substance abuse addictions.

"(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars ($225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more personal services contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection.

"(c) No later than August 15, 2006, the Secretary shall designate between 15 and 25 appropriate groupings of LMEs for the development of regional crisis facilities. As used in this section, the term 'regional crisis facility' means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME, but that provides adequate access to a facility by all consumers in the State. The Secretary shall consult with LMEs in determining the regional groupings. The Secretary shall also take into consideration geographical factors, prior LME groupings and partnerships, and existing community facilities.

"(d) With the assistance of the consultant, the LMEs within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis stabilization units, 23-hour beds, facility-based crisis, inpatient crisis, detox, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

"If all LMEs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall first attempt to secure those services through a community hospital or other community facility. If all LMEs in the crisis region determine the region's crisis needs are being met, the LMEs may use the funds to meet local crisis service needs."

"(e) Each LME shall submit its crisis services plan to the Secretary for review no later than March 1, 2007. The plan shall take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated under this section. The Secretary shall review each plan to determine whether it meets all the requirements of this section. If the Secretary approves the plan, the LME shall receive implementation funding."

"(f) LMEs shall report monthly to the Department and to the consultant regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and any remaining gaps in local and regional crisis services. The consultant and the Department shall report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each LME's proposed and actual use of the funds appropriated under this section. The reporting requirements under this subsection shall expire July 1, 2008."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 10.49(o), provides: "LMEs shall report monthly to the Department and to the consultant regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and any remaining gaps in local and regional crisis services. The consultant and the Department shall report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each LME's proposed and actual use of the funds appropriated under this section. The reporting requirements under this subsection shall expire July 1, 2008."

Session Laws 2007-323, ss. 10.49(r)-(s5), provide: "(r) The Department of Health and Human Services shall develop a system for reporting to LMEs aggregate information regarding all visits to community hospital emergency departments due to a mental illness, a developmental disability, or a substance abuse disorder. The report shall be submitted on a quarterly basis beginning with the 2007-2008 fiscal year.

"(s1) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division), the sum of two million five hundred thousand dollars ($2,500,000) for the 2007-2008 fiscal year and the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be used to develop a pilot program to reduce State psychiatric hospital use and to increase local services for persons with mental illness. Of these funds, the sum of two hundred fifty thousand dollars ($250,000) in each fiscal year shall be retained by the Department. The remainder in each fiscal year shall be allocated to LMEs to be used in accordance with this section. The Division and each selected LME shall implement an 18-month pilot beginning in the 2007-2008 fiscal year, as provided in subsections (s2) and (s3) of this section. It is the intent of the General Assembly to provide funds to expand the pilot program in the 2008-2009 fiscal year. To this end, the Division shall develop a plan for expanded pilots as provided in subsection (s4) of this section.

"(s2) The purpose of the 18-month pilot program developed under subsection (s1) of this section and to be implemented during the 2007-2008 fiscal year is to test a mechanism to reduce psychiatric hospital use by holding an LME financially and clinically responsible for the cost of that use and by providing additional resources to build community capacity. The Department shall select up to three LMEs in the same catchment area and at least one LME in a different catchment area that submit a proposal to participate in the pilot to the Division no later than October 15, 2007. The proposal shall include a plan by the LME to reduce hospital use by a specified amount and an explanation of how the LME expects to accomplish this goal. To facilitate pilot implementation, the Division shall do all of the following:

"(1) Calculate the cost of each LME's 2006-2007 use of State psychiatric hospital services based roughly on that hospital's total budget and the percentage of patients at the hospital admitted from the LME's catchment area.

"(2) Calculate a daily rate for hospital usage based on 2006-2007 statewide usage. The daily rate shall be higher for subsequent admissions by the same patient and higher for patients admitted with a primary diagnosis of substance abuse.

"(3) Provide the results from subdivisions (1) and (2) of this subsection to all LMEs not later than September 1, 2007.

"(4) Award pilot participation not later than November 1, 2007, based upon the proposals that project the largest decrease in use and that the Division believes has the greatest likelihood of succeeding.

"(5) Commence pilot implementation not later than January 1, 2008.

"(s3) Parameters of the pilot developed under subsection (s1) of this section are as follows:

"(1) The pilot LMEs will have a virtual budget account for January 1, 2008, through June 30, 2008, based on one-half of the LME's cost of State psychiatric hospital use during the 2006-2007 fiscal year minus the LME's proposed reduction in hospital use. The virtual budget account will be for the full amount less an agreed upon reduction in the second year of the pilot.

"(2) Every bed day used by patients from that LME's catchment area will be debited against that LME's virtual account.

"(3) The cost of bed days will increase by the agreed upon amount for patients who are repeatedly admitted to the hospital.

"(4) The cost of bed days will increase by the agreed upon amount for patients who are admitted with a primary diagnosis of substance abuse.

"(5) The LME shall have one or more representatives on site at the State psychiatric hospital. The LME representatives shall be involved with patient admissions, development of treatment plans, supervision and delivery of treatment, and development and implementation of discharge plans.

"(6) The pilot LMEs shall use their allocated funds to: (i) build community capacity through start-up operations or payment for local services; (ii) pay for the on-site representative at State psychiatric hospitals; and (iii) pay for patient bed days that are in excess of RFP's projected use.

"(7) Any funds remaining from the two million two hundred fifty thousand dollar ($2,250,000) allocation shall carry over to be used by the LMEs to pay for services to the mentally ill.

"(s4) Based on the experiences of the pilot programs authorized under subsections (s2) and (s3) of this section, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) shall work with the existing hospital use study group to develop a proposal for subsequent pilots to reduce hospital use and build community services. The Division may use up to two hundred fifty thousand dollars ($250,000) in each fiscal year to develop the proposal. The Division shall submit an interim report on its progress to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Oversight Committee) by October 15, 2007, and a second interim report by February 1, 2008. The Division shall submit its final report to the Oversight Committee by February 1, 2009. The final report shall include a description of the pilot LMEs' success in working with local hospitals and the resulting reductions in the use of emergency rooms, jails, and State facilities.

"(s5) The budgets for the State psychiatric hospitals shall not be reduced during the 2007-2008 fiscal year as a result of the pilot developed under subsection (s1) of this section. However, those budgets shall be adjusted in following years to reflect the previous year's use by the LMEs participating in the pilot program."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007 2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007 2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 10.12(f), provides: "(1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall continue implementation of the current Supports Intensity Scale (SIS) assessment tool pilot project if the pilot project has demonstrated that the SIS tool:

"a. Is effective in identifying the appropriate array and intensity of services, including residential supports or placement, for individuals assessed.

"b. Is valid for determining intensity of support related to resource allocation for CAP-MR/DD, public and private ICF-MR facilities, developmental disability group homes, and other State- or federally funded services.

"c. Is used by an assessor that does not have a pecuniary interest in the determinations resulting from the assessment.

"d. Determines the level of intensity and type of services needed from developmental disability service providers.

"(2) The Department shall report on the progress of the pilot project by May 1, 2010. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:

"a. The infrastructure that will be needed to assure that the administration of the assessment tool is independent from service delivery, the qualifications of assessors, training and management of data, and test-retest accountability.

"b. The cost to (i) purchase the tool, (ii) implement the tool, (iii) provide training, and (iv) provide for future expansion of the tool statewide."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

CASE NOTES

No Exception to the General Public Duty Doctrine Created. — Neither G.S. 122C-301 nor this section expressly authorizes a private right of action for the breach of its terms or imposes an affirmative duty on an officer beyond the public duty doctrine. Lane v. City of Kinston, 142 N.C. App. 622, 544 S.E.2d 810, 2001 N.C. App. LEXIS 178 (2001).

Applied in Williamson v. Liptzin, 141 N.C. App. 1, 539 S.E.2d 313, 2000 N.C. App. LEXIS 1276 (2000).

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 122C-3. Definitions.

The following definitions apply in this Chapter:

(1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.

(2) "Area board" means the area mental health, developmental disabilities, and substance abuse board.

(2a) "Area director" means the administrative head of the area authority program appointed pursuant to G.S. 122C-121.

(2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area authorities and multicounty programs.

(3) "Camp Butner reservation" means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State, and shall also include those areas within the municipal boundaries of the Town of Butner and that portion of the extraterritorial jurisdiction of the Town of Butner consisting of lands not owned by the State of North Carolina.

(4) "City" has the same meaning as in G.S. 153A-1(1).

(5) "Catchment area" means the geographic part of the State served by a specific area authority or county program.

(6) "Client" means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) "Client advocate" means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) "Confidential information" means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(9a) "Core services" are services that are necessary for the basic foundation of any service delivery system. Core services are of two types: front-end service capacity such as screening, assessment, and emergency triage, and indirect services such as prevention, education, and consultation at a community level.

(10) "County of residence" of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(10a) "County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.

(11) "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or

3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

(11a) "Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

(12) "Department" means the North Carolina Department of Health and Human Services.

(12a) "Developmental disability" means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) "Division" means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) Repealed by Session Laws 2000-67, s. 11.21(c), effective July 1, 2000.

(13a1) Recodified as subdivision (13c).

(13b) Recodified as subdivision (13d).

(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;

b. Their parents have requested to have them receive services in the preschool program for children with disabilities established under Article 9 of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c) [G.S. 115C-107.1(c)].

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13d) "Eligible psychologist" means a licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) "Guardian" means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

(16) "Habilitation" means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) "Incompetent adult" means an adult individual adjudicated incompetent.

(18) "Intoxicated" means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) "Law-enforcement officer" means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney.

(20a) "Local funds" means fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.

(20b) "Local management entity" or "LME" means an area authority, county program, or consolidated human services agency. It is a collective term that refers to functional responsibilities rather than governance structure.

(21) "Mental illness" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so im-

pairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) "Mentally retarded with accompanying behavior disorder" means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(23a) "Minimally adequate services" means a level of service required for compliance with all applicable State and federal laws, rules, regulations, and policies and with generally accepted professional standards and principles.

(24) "Next of kin" means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) "Operating costs" means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(26a) "Other recipient" means an individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.

(27) "Outpatient treatment" as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) "Physician" means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(29a) "Program director" means the director of a county program established pursuant to G.S. 122C-115.1.

(30) "Provider of support services" means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) "Psychologist" means an individual licensed to practice psychology under Chapter 90. The term "eligible psychologist" is defined in subdivision (13a).

(30b) "Public services" means publicly funded mental health, developmental disabilities, and substance abuse services, whether provided by public or private providers.

(31) "Qualified professional" means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.

(32) "Responsible professional" means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) "Secretary" means the Secretary of the Department of Health and Human Services.

(33a) "Severe and persistent mental illness" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

(34) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.

(35a) Renumbered as subdivision (35e).

(35b) "Specialty services" means services that are provided to consumers from low-incidence populations.

(35c) "State" or "Local" Consumer Advocate means the individual carrying out the duties of the State or Local Consumer Advocacy Program Office in accordance with Article 1A of this Chapter.

(35d) "State Plan" means the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(35e) "State resources" means State and federal funds and other receipts administered by the Division.

(36) "Substance abuse" means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.

(37) "Substance abuser" means an individual who engages in substance abuse.

(38) "Targeted population" means those individuals who are given service priority under the State Plan.

(39) "Uniform portal process" means a standardized process and procedures used to ensure consumer access to, and exit from, public services in accordance with the State Plan. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg.

Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1998-198, s. 3; 1998-202, s. 4(r); 1999-186, s. 1; 2000-67, s. 11.21(c); 2001-437, ss. 1.2(b), 1.2(c); 2001-437, s. 1.2(a); 2003-313, s. 1; 2006-69, s. 3(n); 2006-142, ss. 4(a), 7; 2007-269, s. 3.1; 2007-502, s. 15(a); 2008-107, s. 10.15(dd).)

Cross References. — As to licensure as a supervised living facility for developmentally disabled adults, see the (identical) editor's notes under G.S. 122C-21, 131D-2.

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

The definitions in the section above have been set out in alphabetical order at the direction of the Revisor of Statutes.

Subdivisions (13a1) and (13b) were renumbered as subdivisions (13c) and (13d) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1989 (Reg. Sess., 1990), c. 1003, s. 6 provides: "Sections 1 through 4 of this act [which amended this section] shall become effective July 1, 1990, and Section 5 of this act shall become effective July 1, 1991, if and only if specific funds are appropriated for the specific programs established by this act. Funds appropriated for the 1990-91 fiscal year or for any year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions." An appropriation was made to implement the provisions of this act in the 1989 (Reg. Sess., 1990) Session.

The bracketed reference, "[G.S. 115C-107.1(c)]" in subsection (13c), was added at the direction of the Revisor of Statutes as that appears to be the intended reference.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

Session Laws 2007-502, ss. 18, 19, provide: "18. The Legislative Research Commission shall study the issue of whether North Carolina law should be amended to allow a person to require life-prolonging measures. The LRC shall involve all stakeholders in the study. The LRC shall report its recommendations to the 2008 Session of the 2007 General Assembly.

"19. The North Carolina Institute of Medicine (Institute) shall study issues related to the provision of end-of-life medical care in North Carolina. As part of the study, the Division of Health Service Regulation, Department of Health and Human Services, and the North Carolina Board of Medicine shall provide to the Institute nonidentifying information regarding claims and complaints related to end-of-life medical treatment by health care providers that was contrary to the express wishes of either the patient or a person authorized by law to make treatment decisions on behalf of the patient. The Institute may review any other data related to end-of-life medical care and treatment the Institute determines is relevant.

"The purpose of this study is to determine whether statutory changes related to advance directives and health care powers of attorney impact the type and quantity of end-of-life medical care provided to patients, whether the patient's or patient representative's express wishes regarding the provision of treatment at the end of life are being honored, and whether there is any change in the number of persons who request continued treatment at the end of their lives, but do not receive that treatment.

"The Institute shall report its findings to the following entities no later than January 30, 2013:

"(1) The 2013 General Assembly.

"(2) The North Carolina Bar Association.

"(3) The North Carolina Medical Society."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15(dd), effective July 1, 2008, added subdivision (23a).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1983 law on constitutional law, see 62 N.C.L. Rev. 1149 (1984).

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

For comment, "Criminal Defendants Deemed Incapable to Proceed to Trial: An Evaluation of North Carolina's Statutory Scheme," see 26 Campbell L. Rev. 41 (2004).

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under former statutory provisions.*

Court Could Not Declare Subdivision Unconstitutional Nunc Pro Tunc. — Where the trial court concluded the case or controversy by finding the respondent not mentally ill pursuant to this section, it lacked jurisdiction to subsequently (six months later) declare nunc pro tunc that subdivision (21)(ii) was unconstitutional. In re Lynette H., 323 N.C. 598, 374 S.E.2d 272 (1988).

Effect of 1985 Amendment. — When the legislature in 1985, deleted the term "recent past" and substituted the term "relevant past," the Court of Appeals construed this legislative amendment as an effort on the part of the legislature to clarify the meaning of the statute, not to change the law. Davis v. North Carolina Dep't of Human Resources, 121 N.C. App. 105, 465 S.E.2d 2 (1995).

Statutory language establishes a two-prong test for dangerousness to self. The first prong addresses self-care ability regarding one's daily affairs. The second prong, which also must be satisfied for involuntary commitment to result, mandates a specific finding of a probability of serious physical debilitation resulting from the more general finding of lack of self-caring ability. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980); In re Crainshaw, 54 N.C. App. 429, 283 S.E.2d 553 (1981); In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

Failure to Care for Needs as Dangerousness. — Failure of a person to properly care for her medical needs, diet, grooming and general affairs would meet the required test of dangerousness to self. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

Eating disorders are subsumed under the definition of mental illness and are not included in the terms "chemical dependency" or "substance abuse." Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources, 117 N.C. App. 601, 452 S.E.2d 334, rev'd in part per curiam, cert. dismissed in part as improvidently granted, 342 N.C. 400, 464 S.E.2d 44 (1995).

Unusual eating habits alone do not amount to danger as contemplated in this statute. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

The State may involuntarily commit a person who cannot be relied upon to maintain the proper diet necessary to her welfare and who has no income to cover the expense of food, clothing, fuel or shelter. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

Trial court must find three elements present in order to find that respondent is dangerous to others: (1) within the recent past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

The statutory definition of "mentally ill," as applied, was not unconstitutionally vague. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

The trial court correctly found the appellant "dangerous to others," under this section and § 122C-276.1, in spite of the appellant's objection that murders which happened 10 years in the past should not be considered because of their "remoteness," where, from both evidentiary and medical perspectives, the nature of his crimes was more important than their timing, and where the court's findings on his dangerousness were also rooted in additional evidence unrelated to his prior crimes, including (1) his past and present mental illness, (2) his behavior since July 17, 1988 (including "slaw incident" during which he became upset and angry with his job supervisor over his co-worker's premature disposal of coleslaw from the hospital grill where he was employed), and (3) his high likelihood of post-release relapse into multi-substance abuse, which all experts agreed was a trigger for his

1988 psychosis during which he killed four people and wounded several others. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

Present statutory definition of "dangerous to others" does not require a finding of overt acts. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

Evidence was competent to support the trial court's conclusions that respondent was mentally ill and dangerous to himself within the statutory definitions of those terms. In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

Appellant Found "Dangerous to others" Under This Section and G.S. 122C-276.1. — Record supported trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity and was committed to a mental hospital did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, 151 N.C. App. 27, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

"Recent Past" Same as "Relevant Past." — The Court of Appeals construed the term "recent past" to mean "relevant past"; as such, violent acts committed by mental patient within the six months prior to the district court hearing were the "relevant past." Davis v. North Carolina Dep't of Human Resources, 121 N.C. App. 105, 465 S.E.2d 2 (1995).

Former § 122-58.1 et seq., and the related definition of mental illness under former § 122-36 were not unconstitutionally vague. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

Facts Supporting Finding as to Mental Illness. — The facts which the court recorded as supporting its ultimate findings, that respondent had delusions as to the extent of the danger posed by the Ku Klux Klan, that she misinterpreted stimuli, and that she was out of touch with reality, might have furnished some support for the ultimate finding that she was mentally ill, but they furnished no support for the court's alternative finding that she was inebriate. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

The appellant could be found "mentally ill" although he was neither psychotic nor drug or alcohol dependent. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

Prisoners receiving mental health care were not covered by subsection (g) of former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62); the statute applied only to mental health patients who were not imprisoned with the Department of Corrections. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources [now Department of Health and Human Services], G.S. 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remain in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Facts Negating Finding as to Mental Retardation. — Where the defendant had an IQ of 70 and presented evidence that he was employed and was able to function in society, the evidence negated a finding that he had deficit adaptive behavior. The defendant did not show he was mentally retarded. State v. Best, 342 N.C. 502, 467 S.E.2d 45 (1996).

Insufficient Support for Determination that Patient was Dangerous. — Involuntary commitment order was error because the order contained insufficient findings, as specifically required by G.S. 122C-268(j), to support the trial court's determination that the patient was dangerous to himself and to others; statements in a physician's report, incorporated by the order, that the patient was a 56-year-old white male, with a history of alcohol abuse/dependence, admitted with manic episode, and who continued to be symptomatic with limited insight regarding his illness, were not sufficient to support the trial court's findings. In re Booker, — N.C. App. —, 667 S.E.2d 302, 2008 N.C. App. LEXIS 1808 (2008).

Applied in In re T.W., 173 N.C. App. 153, 617 S.E.2d 702, 2005 N.C. App. LEXIS 1922 (2005).

Cited in Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 85 N.C. App. 495, 364 S.E.2d 179 (1988); Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4th Cir. 1990); Scott v. Scott, 336 N.C. 284, 442 S.E.2d 493 (1994); In re LaRue, 113 N.C. App. 807, 440 S.E.2d 301 (1994); Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994); Gregory v. Kilbride, 150 N.C. App. 601, 565

S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002); In re J.S.L., 177 N.C. App. 151, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

§ 122C-4. Use of phrase "client or his legally responsible person."

Except as otherwise provided by law, whenever in this Chapter the phrase "client or his legally responsible person" is used, and the client is a minor or an incompetent adult, the duty or right involved shall be exercised not by the client, but by the legally responsible person. (1985, c. 589, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Right to Choose Attorney. — A minor client who is receiving treatment or habilitation from a 24-hour facility, as that term is defined in G.S. 122C-3(14)g, does not have the right to choose at his or her own expense or the expense of his or her legally responsible person, an attorney of the minor client's choice. The legally responsible person is the only one who can choose an attorney for the minor client unless the minor is over the age of 16 and emancipated. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

§ 122C-5. Report on restraint and seclusion.

The Secretary shall report annually on October 1 to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the following for the immediately preceding fiscal year:

(1) The level of compliance of each facility with applicable State and federal laws, rules, and regulations governing the use of restraints and seclusion. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of facilities that reported deaths under G.S. 122C-31, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 122C-31, and the number found by the investigation to be related to the use of restraint or seclusion. (2000-129, s. 3(b); 2003-58, s. 1.)

§ 122C-6. Smoking prohibited; penalty.

(a) Smoking is prohibited inside facilities licensed under this Chapter. As used in this section, "smoking" means the use or possession of any lighted cigar, cigarette, pipe, or other lighted smoking product. As used in this section, "inside" means a fully enclosed area.

(b) The person who owns, manages, operates, or otherwise controls a facility subject to this section shall:

(1) Conspicuously post signs clearly stating that smoking is prohibited inside the facility. The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(2) Direct any person who is smoking inside the facility to extinguish the lighted smoking product.

(3) Provide written notice to individuals upon admittance that smoking is prohibited inside the facility and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c) The Department may impose an administrative penalty not to exceed two hundred dollars ($200.00) for each violation on any person who owns, manages, operates, or otherwise controls a facility licensed under this Chapter and fails to comply with subsection (b) of this section. A violation of this section constitutes a civil offense only and is not a crime.

(d) This section does not apply to State psychiatric hospitals. (2007-459, s. 3.)

Editor's Note. — Session Laws 2007-459, s. 5, made this section effective October 1, 2007, and applicable to violations committed on or after that date.

Session Laws 2007-459, s. 5, also provides in part: "G.S. 131D-4.4(c)(3), 131E-114.3(b)(3), and 122C-6(b)(3), as enacted by this act, apply to individuals admitted to the facility on or after October 1, 2007."

§§ 122C-7 through 122C-9: Reserved for future codification purposes.

ARTICLE 1A.

MH/DD/SA Consumer Advocacy Program.

(This article has a contingent effective date)

§ 122C-10. (This article has a contingent effective date — see note) MH/DD/SA Consumer Advocacy Program.

The General Assembly finds that many consumers of mental health, developmental disabilities, and substance abuse services are uncertain about their rights and responsibilities and how to access the public service system to obtain appropriate care and treatment. The General Assembly recognizes the importance of ensuring that consumers have information about the availability of services and access to resources to obtain timely quality care. There is established the MH/DD/SA Consumer Advocacy Program. The purpose of this Program is to provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services, resolve complaints, or address common concerns and promote community involvement. It is further the intent of the General Assembly that the Department, within available resources and pursuant to its duties under this Chapter, ensure that the performance of the mental health care system in this State is closely monitored, reviews are conducted, findings and recommendations and reports are made, and that local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — Session Laws 2001-437, s. 4, as amended by Session Laws 2002-126, s. 10.30, as amended by Session Laws 2003-284, s. 10.10, as amended by Session Laws 2005-276, s. 10.27, provides that s. 2 of the act, which added this Article, becomes effective July 1 of the fiscal year for which funds are appropriated by the General Assembly for that purpose.

Session Laws 2001-437, ss. 3(a) to 3(d), provide:

"(a) The Department of Health and Human Services shall do the following to prepare for the certification of area authorities and county programs to administer and deliver mental health, developmental disabilities, and substance abuse services.

"(1) Develop the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services in accordance with G.S. 122C-102. Not later than December 1, 2001, the Department shall submit the State Plan to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services for its review.

"(2) Review all rules currently in effect and adopted by the Secretary, the Commission for

Mental Health, Developmental Disabilities, and Substance Abuse Services and identify areas of duplication, vagueness, or ambiguity in content or in application. In conducting this review, the Department shall solicit input from current area authorities and providers on perceived problems with rules. The review may also include review of rules pertaining to mental health, developmental disabilities, and substance abuse services that are in effect and adopted by agencies other than the Secretary and the Commission.

"(3) Review the oversight and monitoring functions currently implemented by the Department to determine the effectiveness of the activities in achieving the intended results. Improve the oversight and monitoring functions and activities, if necessary.

"(4) Develop service standards, outcomes, and a financing formula for core and targeted services to prepare for their administration, financing, and delivery by area authorities and county programs.

"(5) Develop format and required content for business plans submitted by boards of county commissioners and for contractual agreements between the Department and area authorities or county commissioners for county programs. Develop a method for departmental evaluation of local business plans. Contractual agreements for the provision of services shall provide for:

"a. Terms of a minimum of three years.

"b. Annual review and renewal.

"c. Specific conditions under which the Department will provide technical assistance, impose sanctions, or terminate participation.

"d. Terms of the business plan.

"e. Award of start-up funds for consolidation of area or county programs.

"(6) Report on the Department's readiness to implement system reform.

"(7) Establish criteria and operational procedures for the Consumer Advocacy Program and make a report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before March 1, 2002.

"(8) Develop a catchment area consolidation plan. The Secretary shall anticipate receiving letters of intent from boards of county commissioners on or before October 1, 2002, indicating the intent of a county or counties to provide services through an existing area authority or through a county program established pursuant to G.S. 122C-115.1. The Secretary shall develop the consolidation plan based on the letters of intent, the State Plan, geographic and population targeted thresholds, and capacity to implement the business plan. The consolidation plan shall provide for consolidation target of no more than 20 area authorities and county programs. The Secretary, in consultation with county commissioners and area authorities, shall complete the consolidation plan by September 1, 2004, and shall submit it no later than January 1, 2005, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the Governor, and each board of county commissioners. The total number of area authorities and county programs shall be reduced to no more than a target of 20 by January 1, 2007.

"(9) Develop a readiness plan to conduct readiness reviews and certify all county programs and area authorities based on readiness by July 1, 2004. Each area authority and county program shall submit its approved business plan to the Secretary pursuant to G.S. 122C-115.2 by January 1, 2003. The Secretary shall review the business plans as provided in G.S. 122C-115.2(c), conduct readiness reviews, and provide necessary assistance to resolve outstanding issues. The Secretary shall complete certification of one-third of the area authorities and county programs by July 1, 2003; two-thirds of the area authorities and county programs by January 1, 2004; and shall complete certification of all area authorities and county programs by July 1, 2004.

"The activities required under subdivisions (1) through (6) of this section [ss. 3(a)(1) to 3(a)(6) of Session Laws 2001-437] shall be completed by December 1, 2001. On or before December 1, 2001, and quarterly thereafter, the Department shall submit a progress report on each of the activities required under this section [s. 3 of Session Laws 2001-437]. The Department shall make its reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

"(b) Rules adopted by the Secretary of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall be adopted in accordance with Chapter 150B of the General Statutes.

"(c) The Secretary shall study consolidating the Quality of Care Consumer Advocacy Program as provided in Section 2 of this act [s. 2 of Session Laws 2001-437, which added Article 1A of Chapter 122C, effective July 1, 2002, contingent on an appropriation] with other consumer advocacy or ombudsman programs in the Department of Health and Human Services. The study shall include:

"(1) An analysis of the budgetary implications of consolidation;

"(2) Strategies for local interagency collaboration and coordination of ombudsman and consumer assistance services; and

"(3) The possible effects of the consolidation on quality of care, service delivery, and consumer assistance for each affected consumer population.

"The Secretary shall report the findings and recommendations, including enabling legislation, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before March 1, 2002.

"(d) The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall conduct an in-depth review of the current methods of and disparities in the allocation of State funding to area authorities and county programs for mental health, developmental disabilities, and substance abuse services and shall recommend necessary changes in allocation formulae, methods, and procedures that will ensure equitable allocation and use of State funds to provide these services throughout the State. Not later than May 1, 2002, the Committee shall report its findings and recommendations, including fiscal information on the cost to address funding allocation disparities, to the General Assembly, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 122C-11. (This article has a contingent effective date — see notes) MH/DD/SA Consumer Advocacy Program/definitions.

Unless the context clearly requires otherwise, as used in this Article:

(1) "MH/DD/SA" means mental health, developmental disabilities, and substance abuse.

(2) "State Consumer Advocate" means the individual charged with the duties and functions of the State MH/DD/SA Consumer Advocacy Program established under this Article.

(3) "State Consumer Advocacy Program" means the State MH/DD/SA Consumer Advocacy Program.

(4) "Local Consumer Advocate" means an individual employed and certified by the State Consumer Advocate to perform the duties and functions of the MH/DD/SA Local Consumer Advocacy Program in accordance with this Article.

(5) "Local Consumer Advocacy Program" means a local MH/DD/SA Local Consumer Advocacy Program.

(6) "Consumer" means an individual who is a client or a potential client of public services from a State or area facility. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

Article 1A has a contingent effective date. See notes.

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§ 122C-12. (This article has a contingent effective date — see note) State MH/DD/SA Consumer Advocacy Program.

The Secretary shall establish a State MH/DD/SA Consumer Advocacy Program office in the Office of the Secretary of Health and Human Services. The Secretary shall appoint a State Consumer Advocate. In selecting the State Consumer Advocate, the Secretary shall consider candidates recommended by citizens' organizations representing the interest of individuals with needs for mental health, developmental disabilities, and substance abuse services. The State Consumer Advocate may hire individuals to assist in executing the State Consumer Advocacy Program and to act on the State Consumer Advocate's behalf. The State Consumer Advocate shall have expertise and experience in MH/DD/SA, including expertise and experience in advocacy. The Attorney General shall provide legal staff and advice to the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-13. (This article has a contingent effective date — see note) State Consumer Advocate duties.

The State Consumer Advocate shall:

(1) Establish Local Quality Care Consumer Advocacy Programs described in G.S. 122C-14 and appoint the Local Consumer Advocates.

(2) Establish certification criteria and minimum training requirements for Local Consumer Advocates.

(3) Certify Local Consumer Advocates. The certification requirements shall include completion of the minimum training requirements established by the State Consumer Advocate.

(4) Provide training and technical Advocacy to Local Consumer Advocates.

(5) Establish procedures for processing and resolving complaints both at the State and local levels.

(6) Establish procedures for coordinating complaints with local human rights committees and the State protection and advocacy agency.

(7) Establish procedures for appropriate access by the State and Local Consumer Advocates to State, area authority, and county program facilities and records to ensure MH/DD/SA. The procedures shall include, but not be limited to, interviews of owners, consumers, and employees of State, area authority, and county program facilities, and on-site monitoring of conditions and services. The procedures shall ensure the confidentiality of these records and that the identity of any complainant or consumer will not be disclosed except as otherwise provided by law.

(8) Provide information to the public about available MH/DD/SA services, complaint procedures, and dispute resolution processes.

(9) Analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to consumers and recommend changes as considered necessary to the Secretary.

(10) Analyze and monitor data relating to complaints or concerns about access and issues to identify significant local or systemic problems, as well as opportunities for improvement, and advise and assist the

Secretary in developing policies, plans, and programs for ensuring that the quality of services provided to consumers is of a uniformly high standard.

(11) Submit a report annually to the Secretary, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Joint Legislative Health Care Oversight Committee containing data and findings regarding the types of problems experienced and complaints reported by or on behalf of providers, consumers, and employees of providers, as well as recommendations to resolve identified issues and to improve the administration of MH/DD/SA facilities and the delivery of MH/DD/SA services throughout the State. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-14. (This article has a contingent effective date — see note) Local Consumer Advocate; duties.

(a) The State Consumer Advocate shall establish a Local MH/DD/SA Consumer Advocacy Program in locations in the State to be designated by the Secretary. In determining where to locate the Local Consumer Advocacy Programs, the Secretary shall ensure reasonable consumer accessibility to the Local Consumer Advocates. Local Consumer Advocates shall administer the Local Consumer Advocacy Programs. The State Consumer Advocate shall appoint a Local Consumer Advocate for each of the Local Consumer Advocacy Programs. The State Consumer Advocate shall supervise the Local Consumer Advocates.

(b) Pursuant to policies and procedures established by the State Consumer Advocate, the Local Consumer Advocate shall:

(1) Assist consumers and their families with information, referral, and advocacy in obtaining appropriate services.

(2) Assist consumers and their families in understanding their rights and remedies available to them from the public service system.

(3) Serve as a liaison between consumers and their families and facility personnel and administration.

(4) Promote the development of consumer and citizen involvement in addressing issues relating to MH/DD/SA.

(5) Visit the State, area authority, or county program facilities to review and evaluate the quality of care provided to consumers and submit findings to the State Consumer Advocate.

(6) Work with providers and consumers and their families or advocates to resolve issues of common concern.

(7) Participate in regular Local Consumer Advocate training established by the State Consumer Advocate.

(8) Report regularly to area authorities and county programs, county and area authority boards, and boards of county commissioners about the Local Consumer Advocate's activities, including the findings made pursuant to subdivision (5) of this subsection.

(9) Provide training and technical assistance to counties, area authority boards, and providers concerning responding to consumers, evaluating quality of care, and determining availability of services and access to resources.

(10) Coordinate activities with local human rights committees based on procedures developed by the State Consumer Advocate.

(11) Provide information to the public on MH/DD/SA issues.

(12) Perform any other related duties as directed by the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-15. (This article has a contingent effective date — see note) State/Local Consumer Advocate; authority to enter; communication with residents, clients, patients; review of records.

(a) For purposes of this section, G.S. 122C-16 and G.S. 122C-17, "Consumer Advocate" means either the State Consumer Advocate or any Local Consumer Advocate.

(b) In performing the Consumer Advocate's duties, a Consumer Advocate shall have access at all times to any State or area facility and shall have reasonable access to any consumer or to an employee of a State or area facility. Entry and access to any consumer or to an employee shall be conducted in a manner that will not significantly disrupt the provision of services. If a facility requires visitor registration, then the Consumer Advocate shall register.

(c) In performing the Consumer Advocate's duties, a Consumer Advocate may communicate privately and confidentially with a consumer. A consumer shall not be compelled to communicate with a Consumer Advocate. When initiating communication, a Consumer Advocate shall inform the consumer of the Consumer Advocate's purpose and that a consumer may refuse to communicate with the Consumer Advocate. A Consumer Advocate also may communicate privately and confidentially with State and area facility employees in performing the Consumer Advocate's duties.

(d) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a consumer, in the course of performing the Consumer Advocate's duties, the Consumer Advocate may access any information, whether recorded or not, concerning the admission, discharge, medication, treatment, medical condition, or history of any consumer to the extent permitted by federal law and regulations. Notwithstanding any State law pertaining to the privacy of personnel records, in the course of the Consumer Advocate's duties, the Consumer Advocate shall have access to personnel records of employees of State, area authority, or county program facilities. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

Article 1A has a contingent effective date. See notes.

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§ 122C-16. (This article has a contingent effective date — see note) State/Local Consumer Advocate; resolution of complaints.

(a) Following receipt of a complaint, a Consumer Advocate shall attempt to resolve the complaint using, whenever possible, informal mediation, conciliation, and persuasion.

(b) If a complaint concerns a particular consumer, the consumer may participate in determining what course of action the Consumer Advocate should take on the consumer's behalf. If the consumer has an opinion concerning a course of action, the Consumer Advocate shall consider the consumer's opinion.

(c) Following receipt of a complaint, a Consumer Advocate shall contact the service provider to allow the service provider the opportunity to respond, provide additional information, or initiate action to resolve the complaint.

(d) Complaints or conditions adversely affecting consumers that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the Consumer Advocate to the appropriate licensing agency under Article 2 of this Chapter. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-17. (This article has a contingent effective date — see note) State/Local Consumer Advocate; confidentiality.

(a) Except as required by law, a Consumer Advocate shall not disclose the following:

(1) Any confidential or privileged information obtained pursuant to G.S. 122C-15 unless the affected individual authorizes disclosure in writing; or

(2) The name of anyone who has furnished information to a Consumer Advocate unless the individual authorizes disclosure in writing.

(b) Violation of this section is a Class 3 misdemeanor, punishable only by a fine not to exceed five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of persons providing information to a Consumer Advocate are exempt from disclosure pursuant to Chapter 132 of the General Statutes. Access to substance abuse records and redisclosure of protected information shall be in compliance with federal confidentiality laws protecting medical records. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

Article 1A has a contingent effective date. See notes.

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§ 122C-18. (This article has a contingent effective date — see note) State/Local Consumer Advocate; retaliation prohibited.

No one shall discriminate or retaliate against any person, provider, or facility because the person, provider, or facility in good faith complained or provided information to a Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-19. (This article has a contingent effective date — see note) State/Local Consumer Advocate; immunity from liability.

(a) The State and Local Consumer Advocate shall be immune from liability for the good faith performance of official Consumer Advocate duties.

(b) A State or area facility, its employees, and any other individual interviewed by a Consumer Advocate are immune from liability for damages resulting from disclosure of any information or documents to a Consumer Advocate pursuant to this Article. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

§ 122C-20. (This article has a contingent effective date — see note) State/Local Consumer Advocate; penalty for willful interference.

Willful interference by an individual other than the consumer or the consumer's representative with the State or a Local Consumer Advocate in the performance of the Consumer Advocate's official duties is a Class 1 misdemeanor. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

Editor's Note. — For contingent effective date, see editor's note at G.S. 122C-10.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-21. Purpose.

The purpose of this Article is to provide for licensure of facilities for the mentally ill, developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and

(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. The Department shall ensure that licensable facilities are inspected every two years to determine compliance with physical plant and life-safety requirements. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1989, c. 625, s. 4; 2005-276, s. 10.40A(c).)

Cross References. — As to penalties for violations of this Article, see G.S. 122C-24.1.

Editor's Note. — Session Laws 2001-209, s. 2, provides: "The licensure of a group home for developmentally disabled adults pursuant to Article 1 of Chapter 131D of the General Statutes shall be transferred to licensure as a supervised living facility for developmentally disabled adults under G.S. 122C-3(14) e. A supervised living facility for developmentally disabled adults licensed under this section shall:

"(1) Except as otherwise provided in this section, comply with licensure requirements of Article 2 of Chapter 122C of the General Statutes;

"(2) Within 12 months of the effective date of this act, comply with building code requirements for smoke detectors;

"(3) Comply either with categories of existing rules applicable to group homes for developmentally disabled adults adopted under Article 1 of Chapter 131D of the General Statutes, or with categories of existing rules applicable under G.S. 122C-3(14) e., at the option of the supervised living facility; and

"(4) Be subject to adverse action on a license under G.S. 122C-24 for failure to comply with applicable statutes or rules.

"A group home for developmentally disabled adults licensed under Article 1 of Chapter 131D of the General Statutes and transferred to licensure under G.S. 122C-3(14) e. shall be deemed to have met the building code requirements for licensure as a supervised living facility.

"The Department of Health and Human Services' Division of Facility Services [now the Division of Health Service Regulation] and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall designate the categories of existing rules applicable to the supervised living facility option under this section."

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;

(3) State and federally operated facilities;

(4) Adult care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services;

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14);

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance approach;

(10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction, as described in G.S. 148-19.1; and

(11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is part of an international organization serving at least 50 countries that helps persons ages 18 through 40 overcome life-controlling problems and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue Code.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7; 1997-506, s. 43; 2000-67, s. 11.25A; 2001-424, s. 25.19(b); 2004-199, s. 32.)

Cross References. — As to exemption from reporting of death of a client, see G.S. 122C-31(i).

Editor's Note. — Session Laws 1999-237, s. 18.8(a), provides that inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction shall be exempt from licensure by the Department of Health and Human Services under Chapter 122C of the General Statutes. If an inpatient facility provides services to inmates of the Department of Correction and to members of the general public, the portion of the facility that serves inmates shall be exempt from licensure.

Session Laws 1999-237, s. 18.8(b), provides that any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction may construct and operate a new chemical dependency or substance abuse facility for that purpose without first obtaining a certificate of need from the Department of Health and Human Services pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new facility or addition developed for that purpose without a certificate of need shall not be licensed pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates unless the owner or operator first obtains a certificate of need.

Session Laws 1999-237, s. 18.8(c), provides that section 18.8 applies to existing facilities, as well as future facilities contracting with the Department of Correction.

For prior similar legislation, see Session Laws 1995, c. 507, s. 19.9.

Session Laws 1999-237, s. 30.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1999-2001 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1999-2001 biennium."

Session Laws 1999-237, s. 1.1, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 1999'."

Session Laws 1999-237, s. 30.4, contains a severability clause.

§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(e) Initial licenses issued under the authority of this section shall be valid for not more than 15 months. Licenses shall be renewed annually thereafter and shall expire at the end of the calendar year. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary. Licenses for facilities that have not served any clients during the previous 12 months are not eligible for renewal.

The Secretary may issue a provisional license for a period up to six months to a person obtaining the initial license for a facility. The licensee must demonstrate substantial compliance prior to being issued a full license.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule when the noncompliance does not present an immediate threat to the health and safety of the individuals in the licensable facility. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(e1) Except as provided in subsection (e2) of this section, the Secretary shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.

(2) The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of this Chapter, or any combination thereof, and any one of the following conditions exist:

a. A single violation has been assessed in the six months prior to the application.

b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.

c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.

d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.

(3) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D until 60 months after the date of reinstatement or restoration of the license.

(e2) The Secretary may enroll a provider described in subsection (e1) of this section if any of the following circumstances apply:

(1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.

(2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

(e3) For purposes of subdivision (e1)(2), fines assessed prior to October 23, 2002, are not applicable to this provision. However, licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

(1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and
(2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee.

(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	**Number of Beds**	**Base Fee**	**Per-Bed Fee**
Facilities (non-ICF/MR):	0 beds	$215.00	$0
	1 to 6 beds	$305.00	$0
	More than 6 beds	$475.00	$17.50
ICF/MR Only:	1 to 6 beds	$845.00	$0
	More than 6 beds	$800.00	$17.50

(i) **(Applicable to social setting detoxification facilities licensed on and after August 7, 2003)** A social setting detoxification facility or medical detoxification facility subject to licensure under this Chapter shall not deny admission or treatment to an individual based solely on the individual's inability to pay. (1899, c. 1, s. 60; Rev., s. 4600; C.S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, ss. 3, 4; 1989, c. 625, s. 6; 2000-55, s. 3; 2002-164, s. 4.1; 2003-284, s. 34.8(a); 2003-294, s. 2; 2003-390, s. 3; 2005-276, ss. 41.2(h), 10.40A(d); 2006-66, s. 10.23; 2009-451, s. 10.76(f).)

Comprehensive Treatment Services Program. — Session Laws 2007-323, ss. 10.10(a)-(h), (j), (k), provide: "(a) The Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. The Program shall be implemented by the Department in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary nonresidential and residential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide. The program shall include the following:

"(1) Behavioral health screening for all children at risk of institutionalization or other out-of-home placement.

"(2) Appropriate and medically necessary nonresidential and residential services for children within the child mental health deaf and hard of hearing target population.

"(3) Appropriate and medically necessary nonresidential and residential treatment services, including placements for sexually aggressive youth.

"(4) Appropriate and medically necessary nonresidential and residential treatment services, including placements for youth needing substance abuse treatment services and children with serious emotional disturbances.

"(5) Multidisciplinary case management services, as needed.

"(6) A system of utilization review specific to the nature and design of the Program.

"(7) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.

"(8) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.

"(9) Other appropriate components to accomplish the Program's purpose.

"(10) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.

"(11) A system of identifying and tracking children placed outside of the family unit in group homes, therapeutic foster care home settings, and other out-of-home placements.

"(12) The development of a strong infrastructure of interagency collaboration.

"(13) Individualized strengths-based care.

"(b) In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

"(1) Provide only those treatment services that are medically necessary.

"(2) Implement utilization review of services provided.

"(3) Adopt the following guiding principles for the provision of services:

"a. Service delivery system must be outcome-oriented and evaluation-based.

"b. Services should be delivered as close as possible to the child's home.

"c. Services selected should be those that are most efficient in terms of cost and effectiveness.

"d. Services should not be provided solely for the convenience of the provider or the client.

"e. Families and consumers should be involved in decision making throughout treatment planning and delivery.

"f. Services shall be specified, delivered, and monitored through a unified Child and Family Plan incorporating the principles of one-child-one-team-one-plan.

"g. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community.

"(4) Implement all of the following cost-reduction strategies:

"a. Preauthorization for all services except emergency services.

"b. Levels of care to assist in the development of treatment plans.

"c. Clinically appropriate services.

"(c) The Department shall collaborate with other affected State agencies such as the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and with local departments of social services, area mental health programs, and local education agencies to eliminate cost shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

"(d) The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department of Health and Human Services, the Department of Public Instruction, and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until the Memoranda of Agreement between local departments of social services, area mental health programs, local education agencies, the Administrative Office of the Courts, and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall address issues pertinent to local implementation of the Program, including provision for the immediate availability of student records to a local school administrative unit receiving a child placed in a residential setting outside the child's home county.

"(e) Notwithstanding any other provision of law to the contrary, services under the Comprehensive Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

"(f) Of the funds appropriated in this act for the Comprehensive Treatment Services Program, the Department of Health and Human Services shall establish a reserve of three percent (3%) to ensure availability of these funds to address specialized needs for children with unique or highly complex problems.

"(g) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected agencies, shall report on the following Program information:

"(1) The number and other demographic information of children served.

"(2) The amount and source of funds expended to implement the Program.

"(3) Information regarding the number of children screened, specific placement of children, including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.

"(4) The average length of stay in residential treatment, transition, and return to home.

"(5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.

"(6) Recommendations on other areas of the Program that need to be improved.

"(7) Other information relevant to successful implementation of the Program.

"(h) The Department shall report on the following Program funding information:

"(1) The amount of Program funding allocated and expended by each LME.

"(2) The amount of Program funds each LME transferred out of the Program to serve purposes other than those outlined by this Program and an explanation of why LMEs transferred the funding.

"(3) Recommendations to improve the penetration rate of Program funds to serve the intended populations across the State.

"(j) Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Task Force. Professional staff shall be those assigned to subject areas or agencies involving child-serving programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and the Department of Public Instruction. Clerical staff shall be furnished to the Task Force through the offices of the House of Representatives and Senate Directors of Legislative Assistants.

"(k) The Department shall report on April 1, 2008, and April 1, 2009, on the implementation of subsections (a) through (h) of this section. The reports required under this subsection shall be made to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division."

For similar provisions, see 2003-294, s. 6(a), and 2005-276, s. 10.25(a)-(g) and (m).

Editor's Note. — Session Laws 2003-284, s. 48.1, provides: "Parts 32 through 47 of this act do not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by those parts before the effective date of its amendment or repeal; nor do they affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Subsection (i) was originally enacted as subsection (h) by Session Laws 2003-390, s. 3. It was redesignated at the direction of the Revisor of Statutes.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 10.76(f), effective the seventh calendar day after the date this act becomes law [August 14, 2009], in subsection (h), in the "Base Fee" column, substituted "$215.00" for "$175.00," "$305.00" for "$250.00," "$475.00" for "$350.00," "$845.00" for "$650.00," and "$800.00" for "$650.00", and in the "Per-Bed Fee" column substituted "$17.50" for "$12.50" twice.

§ 122C-23.1. Licensure of residential treatment facilities.

The General Assembly finds:

(1) That much of the care for residential treatment facility residents is paid by the State and the counties;

(2) That the cost to the State for care for residents of residential treatment facilities is substantial, and high vacancy rates in residential treatment facilities further increase the cost of care;

(3) That the proliferation of residential treatment facilities results in costly duplication and underuse of facilities and may result in lower quality service;

(4) There is currently no ongoing relationship between some applicants for licensure and local management entities (LMEs) that are responsible for the placement of children and adults in residential treatment facilities; and

(5) That it is necessary to protect the general welfare and lives, health, and property of the people of the State for the local management entity (LME) to verify that additional beds are needed in the LME's catchment area before new residential treatment facilities are licensed. This process is established to ensure that unnecessary costs to the State do not result, residential treatment facility beds are available where needed, and that individuals who need care in residential treatment facilities may have access to quality care.

Based on these findings, the Department of Health and Human Services may license new residential treatment facilities if the applicant for licensure submits with the application a letter of support obtained from the local management entity in whose catchment area the facility will be located. The letter of support shall be submitted to the Department of Health and Human Services, Division of Health Service Regulation and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the same type of facility in the catchment area and the projected need for additional beds of the same type of facility. As used in this subsection, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes. (2005-276, s. 10.40(a); 2007-182, s. 1.)

Editor's Note. — Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2005-276, s. 10.40(b), provides: "This section applies to license applications pending and license applications submitted on and after the effective date of this act [July 1, 2005.]"

§ 122C-24. Adverse action on a license.

(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes. Action[s] under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150B of the General Statutes.

(b) When an appeal is filed concerning the denial, suspension, amendment, or revocation of a license, a copy of the proposal for decision shall be sent to the Chairman of the Commission in addition to the parties specified in G.S. 150B-34. The Chairman or members of the Commission designated by the Chairman may submit for the Secretary's consideration written or oral comments concerning the proposal prior to the issuance of a final agency decision in accordance with G.S. 150B-36. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 8-10; 1987, c. 345, s. 5.)

Cross References. — As to licensure as a supervised living facility for developmentally disabled adults, see the (identical) editor's notes under G.S. 122C-21, 131D-2.

Editor's Note. — The word "Action" at the beginning of the second sentence of subsection (a) was apparently intended to be the word "Actions."

§ 122C-24.1. Penalties; remedies.

(a) Violations Classified. — The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;

b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and

c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation in facilities or programs that serve six or fewer persons. The Department shall impose a civil penalty in an amount not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each Type A Violation in facilities or programs that serve seven or more persons.

(2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the

licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

(b) Penalties for Failure to Correct Violations Within Time Specified. —

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars ($400.00) for each day that the deficiency continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. — In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the fact that death or serious physical harm to a client or patient has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The gravity of the violation, including the probability that death or serious physical harm to a client or patient will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(3) The gravity of the violation, including the probability that death or serious physical harm to a client or patient may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(4) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and other applicable State and federal laws and regulations;

(5) Efforts by the licensee to correct violations;

(6) The number and type of previous violations committed by the licensee within the past 36 months;

(7) The amount of assessment necessary to ensure immediate and continued compliance; and

(8) The number of clients or patients put at risk by the violation.

(d) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Department shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The licensee involved;
(2) The clients or patients affected; and
(3) The family members or guardians of the clients or patients affected.

(e) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(f) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and
(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(g) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the violation began.

(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(i) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

(1) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
(2) The training is:
    a. Specific to the violation;
    b. Approved by the Department of Health and Human Services; and
    c. Taught by someone approved by the Department and other than the provider.

(j) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law.

(k) In considering renewal of a license, the Department shall not renew a license if outstanding fines and penalties imposed by the Department against the facility or program have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration for nonrenewal under this subsection. (2000-55, s. 4; 2005-276, ss. 10.40A(e), 10.40A(f).)

§ 122C-25. Inspections; confidentiality.

(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e. shall be inspected on an annual basis.

(b) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, in the course of an inspection conducted under this section, representatives of the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any individual who is or has been a patient, resident, or client of a licensable facility and the personnel records of those individuals employed by the licensable facility.

A licensable facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning a licensable facility without the individual's consent.

Violation of this subsection is a Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).

All confidential or privileged information obtained under this section and the names of persons providing this information are exempt from Chapter 132 of the General Statutes.

(c) The Secretary shall adopt rules regarding inspections, that, at a minimum, provide for:

(1) A general administrative schedule for inspections; and

(2) An unscheduled inspection without notice, if there is a complaint alleging the violation of any licensing rule adopted under this Article.

(d) All residential facilities, as defined in G.S. 122C-3(14)e., shall ensure that the Division of Health Service Regulation complaint hotline number is posted conspicuously in a public place in the facility. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1993, c. 539, s. 918; 1994, Ex. Sess., c. 24, s. 14(c); 2005-276, ss. 10.40A(g), 10.40A(h); 2007-182, s. 1.)

Editor's Note. — Session Laws 2005-276, s. 10.40(r), provides that amendments by s. 10.40(g) and (h) of the act, becomes effective July 1, 2007, except that the Division may conduct inspections more frequently than annually prior to July 1, 2007, as funds and personnel permit.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.5 is a severability clause.

§ 122C-26. Powers of the Commission.

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;

(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;

(4) Adopt rules for the waiver of rules adopted under this Article; and

(5) Adopt rules applicable to facilities licensed under this Article:

    a. Establishing personnel requirements of staff employed in facilities;
    b. Establishing qualifications of facility administrators or directors;
    c. Establishing requirements for death reporting including confidentiality provisions related to death reporting;
    d. Establishing requirements for patient advocates; and

e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.

(6) Adopt rules providing for the licensure and accreditation of residential treatment facilities that provide services to persons with traumatic brain injury. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 2000-55, s. 5; 2005-276, s. 10.33; 2009-361, s. 1.)

Editor's Note. — Session Laws 2000-55, s. 6, provides that, notwithstanding G.S. 150B-21.1(a), the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services is to adopt temporary rules to implement G.S. 122C-26(5).

Session Laws 2008-131, s. 3, provides: "The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the current death reporting requirements under G.S. 122C-26(5)c. and assess the need for any additional reporting requirements or modifications to existing rules or procedures. The Commission shall report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than November 1, 2008."

Session Laws 2009-361, s. 2, provides: "The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services may adopt temporary rules to carry out the provisions of Section 1 of this act until July 1, 2010."

Session Laws 2009-490, s. 4, provides: "The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program shall be implemented at a facility currently authorized to waive the requirement set forth in 10A NCAC 27G.1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver shall remain in effect until December 31, 2012; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey, that are related to electronic supervision."

Session Laws 2009-490, s. 5, provides: "The Department of Health and Human Services shall report on the implementation of the pilot program described in Section 4 of this act, including any findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than April 10, 2010."

Effect of Amendments. — Session Laws 2009-361, s. 1, effective July 27, 2009, added subdivision (6).

§ 122C-27. Powers of the Secretary.

The Secretary shall:

(1) Administer and enforce the provisions, rules, and decisions pursuant to this Article;

(2) Appoint hearing officers to conduct appeals under this Article;

(3) Prescribe by rule the contents of the application for licensure and renewal;

(4) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article;

(5) Issue a license upon a finding that the applicant and facility comply with the provisions of this Article and the rules of the Commission and the Secretary;

(6) Define by rule procedures for submission of periodic reports by facilities licensed under this Article;

(7) Grant, deny, suspend, or revoke a license under this Article;

(8) In accordance with rules of the Commission, make final agency decisions for appeals from the denial, suspension, or revocation of a license in accordance with G.S. 122C-24; and

(9) In accordance with rules of the Commission, grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a licensable facility. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

§ 122C-28. Penalties.

Operating a licensable facility without a license is a Class 3 misdemeanor and is punishable only by a fine not to exceed fifty dollars ($50.00), for the first offense and a fine, not to exceed five hundred dollars ($500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1993, c. 539, s. 919; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 122C-29. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the way provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a licensable facility operating without a license or in a way that threatens the health, safety, or welfare of the individuals in the licensable facility.

(b) If any individual interferes with the proper performance or duty of the Secretary in carrying out this Article, the Secretary may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

§ 122C-30. Peer review committee; immunity from liability; confidentiality.

For purposes of peer review functions of a facility licensed under the provisions of this Chapter:

(1) A member of a duly appointed peer review committee or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and

(2) Proceedings of a peer review or quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and noth-

ing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review or quality assurance process, but cannot be asked about the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings. (1989 (Reg. Sess., 1990), c. 1053, s. 2; 2004-149, s. 2.8.)

Cross References. — As to provisions pertaining to medical review committees, see G.S. 131E-95.

CASE NOTES

Cited in Sharpe v. Worland, 137 N.C. App. 82, 527 S.E.2d 75 (2000).

§ 122C-31. Report required upon death of client.

(a) A facility shall notify the Secretary immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client, and shall notify the Secretary within three days of the death of any client of the facility resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Secretary of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, 42 U.S.C. § 15001, et seq., that a person with a disability has died. The Secretary shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary shall initiate immediately an investigation of the death.

(d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the General Statutes shall comply with this section.

(e) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary or the agency. In carrying out the requirements of this section, the Secretary and the agency shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(f) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section.

(g) In addition to the reporting requirements specified in subsections (a) through (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report, without redactions other than to protect confidential personnel information, the death of any client of the facility, and, if known, the death of any former client of a facility who dies within 14 days of release from the facility, regardless of the manner of death:

(1) To the medical examiner of the county in which the body of the deceased is found; and

(2) To the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, 42 U.S.C. § 15001, et seq. The State protection and advocacy agency shall use the information in accordance with its powers and duties under applicable State or federal law and regulations.

(h) Notwithstanding G.S. 122C-52, and unless otherwise prohibited by State or federal law or requirements, in order to provide for greater transparency in connection with the reporting requirements specified in subsections (a) through (g) of this section, the following information in reports made pursuant to this section shall be public records within the meaning of G.S. 132-1 when reported by a State facility:

(1) The name, sex, age, and date of birth of the deceased.

(2) The name of the facility providing the report.

(3) The date, time, and location of the death.

(4) A brief description of the circumstances of death, including the manner of death, if known.

(5) A list of all entities to whom the event was reported.

(i) Notwithstanding G.S. 122C-22, all facilities, as defined in G.S. 122C-3(14), shall comply with this section. (2000-129, s. 3(a); 2007-323, ss. 19.1(e), (f); 2008-131, s. 1; 2009-299, ss. 1-4.)

Editor's Note. — Session Laws 2007-323, s. 19.1(b), provides: "(b) Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, the Governor shall redesignate the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity. The Governor shall follow the federal statutory procedure for redesignation found at 45 C.F.R. § 1386.20, with a target transfer date of July 1, 2007."

Session Laws 2007-323, s. 19.1(*l*), provides: "This section is effective on the effective date of the redesignation and transfer of the operation and function of the Governor's Advocacy Council for Persons with Disabilities from the Department of Administration to a nongovernmental entity under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402. Any funds appropriated to the Governor's Advocacy Council for Persons with Disabilities revert to the General Fund on that date." The redesignation and transfer were effective July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-131, s. 3, provides: "The

Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the current death reporting requirements under G.S. 122C-26(5)c. and assess the need for any additional reporting requirements or modifications to existing rules or procedures. The Commission shall report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than November 1, 2008."

Effect of Amendments. — Session Laws 2008-131, s. 1, effective July 28, 2008, added subsection (g).

Session Laws 2009-299, ss. 1 to 4, effective July 17, 2009, in subsection (b), substituted "42 U.S.C. § 15001, et seq." for "P.L. 106-402"; rewrote subsection (g); and added subsections (h) and (i).

§§ 122C-32 through 122C-50: Reserved for future codification purposes.

Article 3.

Clients' Rights and Advance Instruction.

Part 1. Client's Rights.

§ 122C-51. Declaration of policy on clients' rights.

It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, developmental disabilities, or substance abuse. Each client has the right to an individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities. (1973, c. 475, s. 1; c. 1436, ss. 1, 8; 1985, c. 589, s. 2; 1989, c. 625, s. 7; 1997-442, s. 1.)

Cross References. — As to penalties for violations of this Article, see G.S. 122C-24.1.

Legal Periodicals. — For note discussing the application of the constitutional right of privacy to a mental patient's refusal of psychotropic medication, see 57 N.C.L. Rev. 1481 (1979).

For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

OPINIONS OF ATTORNEY GENERAL

Applicability. — The provisions of former G.S. 122-55.1 through 122-55.14, relating to patients' rights, applied to services provided for an area mental health authority (now area mental health, developmental disabilities, and substance abuse authority) by a general hospital, etc., on a contractual basis. See opinion of Attorney General to Mr. R.J. Bickel, Deputy Director for Administration, Division of Mental Health and Mental Retardation Services, 48 N.C.A.G. 9 (1978).

Parent-Child Relationship Unaffected. — See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services, Division of Mental Health Services, 44 N.C.A.G. 3 (1974), rendered under former statutory provisions.

§ 122C-52. Right to confidentiality.

(a) Except as provided in G.S. 132-5 and G.S. 122C-31(h), confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes.

(b) Except as authorized by G.S. 122C-53 through G.S. 122C-56, no individual having access to confidential information may disclose this information.

(c) Except as provided by G.S. 122C-53 through G.S. 122C-56, each client has the right that no confidential information acquired be disclosed by the facility.

(d) No provision of G.S. 122C-205 and G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(e) Except as required or permitted by law, disclosure of confidential information to someone not authorized to receive the information is a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars ($500.00). (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1965, c. 800, s. 4; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 11; 1987, c. 749, s. 2; 1993, c. 539, s. 920; 1994, Ex. Sess., c. 24, s. 14(c); 2009-299, s. 5.)

Effect of Amendments. — Session Laws 2009-299, s. 5, effective July 17, 2009, inserted "and G.S. 122C-31(h)" in subsection (a).

Legal Periodicals. — For survey of 1979 law on evidence, see 58 N.C.L. Rev. 1456 (1980).

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Mental Health Records Admissible. — Rutherford County Department of Social Services was not precluded from admitting the mother's mental health records into evidence. In re J.S.L., 177 N.C. App. 151, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

Disclosure of the decedent's substance abuse treatment information, pursuant to a trial judge's order in a medical malpractice action where the decedent's mental health and history of substance abuse were placed at issue by the decedent and later the decedent's executor, was authorized by the exception codified in G.S. 122C-54 because the disclosure of the information was not prohibited by 42 C.F.R. §§ 2.63(a)(3) and 2.64(d). Spangler v. Olchowski, 187 N.C. App. 684, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

Cited in In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862 (1993).

§ 122C-53. Exceptions; client.

(a) A facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of the information to a specified person. This release is valid for a specified length of time and is subject to revocation by the consenting individual.

(b) A facility may disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client.

(c) Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to a client, the client may request that the information be sent to a physician or psychologist of the client's choice, and in this event the information shall be so provided.

(d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person of a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided.

(e) A client advocate's access to confidential information and his responsibility for safeguarding this information are as provided by subsection (g) of this section.

(f) As used in subsection (g) of this section, the following terms have the meanings specified:

(1) "Internal client advocate" means a client advocate who is employed by the facility or has a written contractual agreement with the Department or with the facility to provide monitoring and advocacy services to clients in the facility in which the client is receiving services; and

(2) "External client advocate" means a client advocate acting on behalf of a particular client with the written consent and authorization;

a. In the case of a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, of the client; or

b. In the case of any other client, of the client and his legally responsible person.

(g) An internal client advocate shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. In this role, the internal client advocate may disclose confidential information received to the client involved, to his legally responsible person, to the director of the facility or his designee, to other individuals within the facility who are involved in the treatment or habilitation of the client, or to the Secretary in accordance with the rules of the Commission. Any further disclosure shall require the written consent of the client and his legally responsible person. An external client advocate shall have access to confidential information only upon the written consent of the client and his legally responsible person. In this role, the external client advocate may use the information only as authorized by the client and his legally responsible person.

(h) In accordance with G.S. 122C-205, the facility shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility.

(i) Upon the request of (i) a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, or (ii) the legally responsible person for any other client, a facility shall disclose to an attorney confidential information relating to that client. (1973, c. 475, s. 1; c. 1436, ss. 2-5; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 26(d); 1995, c. 507, s. 23.4.)

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Editor's Note. *— One of the cases annotated below was decided under former statutory provisions.*

Prisoners receiving mental health care were not covered by former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients who were not imprisoned with the Department of Correction. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources, G.S. 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

Cited in Spangler v. Olchowski, 187 N.C. App. 684, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

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Disclosure of Information to Former Patient. — There is no absolute prohibition against disclosing information from a former patient's records to the former patient. Such a request should be acted upon according to the circumstances of the case. See opinion of Attorney General to Mr. R. Patterson Webb, Assistant Commissioner for Administration, N.C. Department of Mental Health, 42 N.C.A.G. 291 (1973), rendered under former statutory provisions.

§ 122C-54. Exceptions; abuse reports and court proceedings.

(a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.

(a1) Upon a determination by the facility director or his designee that disclosure is in the best interests of the client, a facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and the appointment of a guardian or an interim guardian under Chapter 35A of the General Statutes.

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court as provided in G.S. 15A-1002, the facility shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d).

(c) Certified copies of written results of examinations by physicians and records in the cases of clients voluntarily admitted or involuntarily committed and facing district court hearings and rehearings pursuant to Article 5 of this Chapter shall be furnished by the facility to the client's counsel, the attorney representing the State's interest, and the court. The confidentiality of client information shall be preserved in all matters except those pertaining to the necessity for admission or continued stay in the facility or commitment under review. The relevance of confidential information for which disclosure is sought in a particular case shall be determined by the court with jurisdiction over the matter.

(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed.

(d1) After a judicial determination that an individual shall be involuntarily committed for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the clerk of superior court in the county where the judicial determination was made shall, as soon as practicable, cause a report of the commitment to be transmitted to the National Instant Criminal Background Check System (NICS). Reporting of an individual involuntarily committed to outpatient mental health treatment under this subsection shall only be reported if the individual is found to be a danger to self or others. The clerk shall also cause to be transmitted to NICS a record where an individual is found not guilty by reason of insanity or found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of documentation that an affected individual has received a relief from disabilities pursuant to G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be updated. The record of involuntary commitment shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts.

(e) Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall be informed in writing by the court of the right provided by this subsection at the time that the application for admission is filed with the court.

(f) A State facility and the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may disclose confidential information to staff attorneys of the Attorney General's office whenever the information is necessary to the performance of the statutory responsibilities of the Attorney General's office or to its performance when acting as attorney for a State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(g) A facility may disclose confidential information to an attorney who represents either the facility or an employee of the facility, if such information is relevant to litigation, to the operations of the facility, or to the provision of services by the facility. An employee may discuss confidential information with his attorney or with an attorney representing the facility in which he is employed.

(h) A facility shall disclose confidential information for purposes of complying with Article 3 of Chapter 7B of the General Statutes and Article 6 of Chapter 108A of the General Statutes, or as required by other State or federal law.

(i) G.S. 132-1.4 shall apply to the records of criminal investigations conducted by any law enforcement unit of a State facility, and information described in G.S. 132-1.4(c) that is collected by the State facility law enforcement unit shall be public records within the meaning of G.S. 132-1.

(j) Notwithstanding any other provision of this Chapter, the Secretary may inform any person of any incident or event involving the welfare of a client or former client when the Secretary determines that the release of the information is essential to maintaining the integrity of the Department. However, the release shall not include information that identifies the client directly, or information for which disclosure is prohibited by State or federal law or requirements, or information for which, in the Secretary's judgment, by reference to publicly known or available information, there is a reasonable basis to believe the client will be identified. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1977, c. 696, s. 1; 1979, c. 147; c. 915, s. 20; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1987, c. 638, ss. 1, 3.1; 1989, c. 141, s. 9; 1993, c. 516, s. 12; 1998-202, s. 13(dd); 2003-313, s. 2; 2008-210, s. 1; 2009-299, s. 6.)

Editor's Note. — Session Laws 1993, c. 516, s. 13 provides that nothing in the act obligates the General Assembly to make any appropriations to implement it.

Effect of Amendments. — Session Laws 2008-210, s. 1, effective December 1, 2008, added subsection (d1).

Session Laws 2009-299, s. 6, effective July 17, 2009, added subsections (i) and (j).

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Mental Health Records Previously Admitted Into Evidence In Parental Rights Termination Case. — Trial court did not err by considering mental health records of a mother contained within the underlying file and previously admitted into evidence in proceedings to terminate her parental rights, because the mental health records challenged by the mother were originally admitted into evidence during a permanency planning review hearing and were not challenged by the mother at that time. In re J.B., 172 N.C. App. 1, 616 S.E.2d 264, 2005 N.C. App. LEXIS 1589 (2005).

Disclosure of Information Authorized. — Disclosure of the decedent's substance abuse treatment information, pursuant to a trial judge's order in a medical malpractice action where the decedent's mental health and history of substance abuse were placed at issue by the decedent and later BY the decedent's executor, was authorized by the exception codified in G.S. 122C-54 as the disclosure of the information was not prohibited by 42 C.F.R. §§ 2.63(a)(3) and 2.64(d). Spangler v. Olchowski, 187 N.C. App. 684, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

Cited in WSOC Television, Inc. v. State ex rel. Att'y Gen., 107 N.C. App. 448, 420 S.E.2d 682 (1992); In re J.S.L., 177 N.C. App. 151, 628 S.E.2d 387, 2006 N.C. App. LEXIS 883 (2006).

OPINIONS OF ATTORNEY GENERAL

Information may be submitted to Secretary of Health, Education and Welfare (now Health and Human Services). See opinion of Attorney General to Mr. R. Patterson Webb, Assistant Commissioner for Administration, N.C. Department of Mental Health, 42 N.C.A.G. 206 (1973), rendered under former statutory provisions.

Disclosure by Order of Clerk of Court. — When ordered by the clerk of superior court, an agent or employee of a state mental institution must disclose information from a patient's record in proceedings to determine whether such patient should be hospitalized. See opinion of Attorney General to Pedro Carreras, M.D., John Umstead Hospital, 41 N.C.A.G. 666 (1971), rendered under former statutory provisions.

§ 122C-54.1. Restoration process to remove mental commitment bar.

(a) Any individual over the age of 18 may petition for the removal of the mental commitment bar to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination that either inpatient or outpatient treatment was appropriate or in the district court of the county of the petitioner's residence. An individual disqualified from firearms possession due to a comparable out-of-State mental commitment shall make application in the county of residence. The clerk of court upon receipt of the petition shall schedule a hearing using the regularly scheduled commitment court time and provide notice of the hearing to the petitioner and the district attorney. Copies of the petition must be served on the director of the inpatient and outpatient treatment facility, in-State or out-of-State, and the district attorney in the petitioner's current county of residence.

(c) The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner no longer suffers from the condition that resulted in commitment and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The district attorney shall present any and all relevant information to the contrary. For these purposes, the district attorney may access and use any and all mental health records, juvenile records, and criminal history of the petitioner wherever maintained. The applicant must sign a release for the district attorney to receive any mental health records of the applicant. This hearing shall be closed to the public, unless the court finds that the public interest would be better served by conducting the hearing in public. If the court determines the hearing should be open to the public, upon motion by the petitioner, the court may allow for the in camera inspection of any mental health records. The court may allow the use of the record but shall restrict it from public disclosure, unless it finds that the public interest would be better served by making the record public. The district court shall enter an order that the petitioner does or does not continue to suffer from the condition that resulted in commitment and does or does not continue to pose a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12. The court shall include in its order the specific findings of fact on which it bases its decision. The decision of the district court may be appealed to the superior court for a hearing de novo. After a denial by the superior court, the applicant must wait a minimum of one year before reapplying. Attorneys designated by the Attorney General shall be available to represent the State, or assist in the representation of the State, in a restoration proceeding when requested to do so by a district attorney and approved by the Attorney General. An attorney so designated shall have all the powers of the district attorney under this section.

(d) Upon a judicial determination to grant a petition under this section, the clerk of superior court in the county where the petition was granted shall forward the order to the National Instant Criminal Background Check System (NICS) for updating of the respondent's record. (2008-210, s. 2.)

Editor's Note. — Session Laws 2008-210, s. 5, made this section effective December 1, 2008.

Session Laws 2008-210, s. 4, provides: "The Administrative Office of the Courts may use up to twenty-five thousand dollars ($25,000) of funds within its budget for the 2008-2009 fiscal year to carry out the provisions of this act."

§ 122C-55. Exceptions; care and treatment.

(a) Any area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill when necessary to coordinate appropriate and effective care, treatment or habilitation of the client. For the purposes of this subsection, coordinate means the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and related services by one or more facilities and includes the referral of a client from one facility to another.

(a1) Any facility may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with a facility when necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment or habilitation of the client. For purposes of this subsection and subsection (a6) of this section, the purposes or activities for which confidential information may be disclosed include, but are not limited to, case management and care coordination, disease management, outcomes evaluation, the development of clinical guidelines and protocols, the development of care management plans and systems, population-based activities relating to improving or reducing health care costs, and the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and related services. As used in this section, "facility" includes an LME and "Secretary" includes the Department's Community Care of North Carolina Program or other primary care case management programs that contract with the Department to provide a primary care case management program for recipients of publicly funded health and related services.

(a2) Any area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with any other area facility or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill when necessary to conduct payment activities relating to an individual served by the facility. Payment activities are activities undertaken by a facility to obtain or provide reimbursement for the provision of services and may include, but are not limited to, determinations of eligibility or coverage, coordination of benefits, determinations of cost-sharing amounts, claims management, claims processing, claims adjudication, claims appeals, billing and collection activities, medical necessity reviews, utilization management and review, precertification and preauthorization of services, concurrent and retrospective review of services, and appeals related to utilization management and review.

(a3) Whenever there is reason to believe that a client is eligible for benefits through a Department program, any State or area facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area facility or State facility or the psychiatric services of the University of North Carolina Hospitals at Chapel Hill. Disclosure is limited to that information necessary to establish initial eligibility for benefits, determine continued eligibility over time, and obtain reimbursement for the costs of services provided to the client.

(a4) An area authority or county program may share confidential information regarding any client with any area facility, and any area facility may share confidential information regarding any client of that facility with the area authority or county program, when the area authority or county program determines the disclosure is necessary to develop, manage, monitor, or evaluate the area authority's or county program's network of qualified providers as provided in G.S. 122C-115.2(b)(1) b., G.S. 122C-141(a), the State Plan, and rules of the Secretary. For the purposes of this subsection, the purposes or activities for which confidential information may be disclosed include, but are not limited to, quality assessment and improvement activities, provider accreditation and staff credentialing, developing contracts and negotiating rates, investigating and responding to client grievances and complaints, evaluating practitioner and provider performance, auditing functions, on-site monitoring, conducting consumer satisfaction studies, and collecting and analyzing performance data.

(a5) Any area facility may share confidential information with any other area facility regarding an applicant when necessary to determine whether the applicant is eligible for area facility services. For the purpose of this subsection, the term "applicant" means an individual who contacts an area facility for services.

(a6) When necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment, or habilitation of the client, a DHHS primary care case manager may disclose confidential information acquired pursuant to subsection (a1) of this section to a health care provider or other entity that has entered into a written agreement with the Department's Community Care of North Carolina Program, or other primary care case management program, to participate in the care management support network and systems developed and maintained by the primary care case manager for the purpose of coordinating and improving the quality of care for recipients of publicly funded health and related services. Health care providers and other entities receiving confidential information from the Department's Community Care of North Carolina Program or other primary care case management program pursuant to this subsection may use and disclose the information as authorized by G.S. 122C-53 through G.S. 122C-56 or as permitted or required by other applicable State or federal law.

(b) A facility, physician, or other individual responsible for evaluation, management, supervision, or treatment of respondents examined or committed for outpatient treatment under the provisions of Article 5 of this Chapter may request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.

(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, developmental disabilities, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, developmental disabilities, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

(d) A responsible professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

(e1) A State facility may furnish client identifying information to the Department for the purpose of maintaining an index of clients served in State facilities which may be used by State facilities only if that information is necessary for the appropriate and effective evaluation, care and treatment of the client.

(e2) A responsible professional may disclose an advance instruction for mental health treatment or confidential information from an advance instruction to a physician, psychologist, or other qualified professional when the responsible professional determines that disclosure is necessary to give effect to or provide treatment in accordance with the advance instruction.

(f) A facility may disclose confidential information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services and the agreement includes a provision in which the provider of support services acknowledges that in receiving, storing, processing, or otherwise dealing with any confidential information, he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to State, local, or federal government agencies. Except as provided in G.S.122C-55(a3), disclosure is limited to that confidential information necessary to establish financial benefits for a client. After establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange confidential information as needed for the purpose of carrying out their responsibility in serving the client.

(i) Upon specific request, a responsible professional may release confidential information to a physician or psychologist who referred the client to the facility.

(j) Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin or other family member or the designee with notification of the client's diagnosis, the prognosis, the medications prescribed, the dosage of the medications prescribed, the side effects of the medications prescribed, if any, and the progress of the client, provided that the client or his legally responsible person has consented in writing, or the client has consented orally in the presence of a witness selected by the client, prior to the release of this information. Both the client's or the legally responsible person's consent and the release of this information shall be documented in the client's medical record. This consent shall be valid for a specified length of time only and is subject to revocation by the consenting individual.

(k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206, upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin, or family member, or the designee, notification of the client's admission to the facility, transfer to another facility, decision to leave the facility against medical advice, discharge from the facility, and referrals and appointment information for treatment after discharge, after notification to the client that this information has been requested.

(*l*) In response to a written request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client, for additional information not provided for in subsections (j) and (k) of this section, and when such written request identifies the intended use for this information, the responsible professional shall, in a timely manner:

(1) Provide the information requested based upon the responsible professional's determination that providing this information will be to the client's therapeutic benefit, and provided that the client or his legally responsible person has consented in writing to the release of the information requested; or

(2) Refuse to provide the information requested based upon the responsible professional's determination that providing this information will be detrimental to the therapeutic relationship between client and professional; or

(3) Refuse to provide the information requested based upon the responsible professional's determination that the next of kin or family member or designee does not have a legitimate need for the information requested.

(m) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules specifically to define the legitimate role referred to in subsections (j), (k), and (*l*) of this section. (1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 15; 1987, c. 638, ss. 2, 3; 1989, c. 141, s. 10; c. 438; c. 625, s. 8; 1989 (Reg. Sess., 1990), c. 1024, s. 27; 1991, c. 359, s. 1; c. 544, s. 1; 1998-198, s. 4; 2003-313, s. 3; 2009-65, s. 1(a), (b); 2009-487, s. 5; 2009-570, s. 43.)

Effect of Amendments. — Session Laws 2009-65, s. 1(a) and (b), effective June 8, 2009, rewrote subsection (a1) and added subsection (a6).

Session Laws 2009-487, s. 5, effective August 26, 2009, inserted "'facility' includes an LME and" in the last sentence of subsection (a1).

Session Laws 2009-570, s. 43, effective August 28, 2009, substituted "the Department's Community Care of North Carolina Program" for "a Department's Community Care of North Carolina Program" in the last sentence of subsection (a6).

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

§ 122C-56. Exceptions; research and planning.

(a) The Secretary may require information that does not identify clients from State and area facilities for purposes of preparing statistical reports of activities and services and for planning and study. The Secretary may also receive confidential information from State and area facilities when specifically required by other State or federal law.

(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, developmental disabilities, and substance abuse. No confidential information shall be further disclosed.

(c) A facility may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for this information. A person receiving the information may not directly or indirectly identify any client in any report of the research or audit or otherwise disclose client identity in any way. (1965, c. 800, s. 4; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 1989, c. 625, s. 9.)

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Cited in Spangler v. Olchowski, 187 N.C. App. 684, 654 S.E.2d 507, 2007 N.C. App. LEXIS 2575 (2007).

§ 122C-57. Right to treatment and consent to treatment.

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and the client's legally responsible person shall be informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or the client's legally responsible person (including a health care agent named pursuant to a valid health care power of attorney) has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or the client's legally responsible person, even if the client's refusal is expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid advance instruction for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2; 1995, c. 336, s. 1; 1997-442, s. 3; 1998-198, s. 5; 1998-217, s. 53(a)(4); 1999-456, s. 4; 2007-502, s. 15(b).)

Editor's Note. — The subsection designation (d1) was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 336, s. 1 having been (d)(1).

Session Laws 2007-502, ss. 18, 19, provide: "18. The Legislative Research Commission shall study the issue of whether North Carolina law should be amended to allow a person to require life-prolonging measures. The LRC shall involve all stakeholders in the study. The LRC shall report its recommendations to the 2008 Session of the 2007 General Assembly.

"19. The North Carolina Institute of Medicine (Institute) shall study issues related to the provision of end-of-life medical care in North Carolina. As part of the study, the Division of Health Service Regulation, Department of Health and Human Services, and the North Carolina Board of Medicine shall provide to the Institute nonidentifying information regarding claims and complaints related to end-of-life medical treatment by health care providers that was contrary to the express wishes of either the patient or a person authorized by law to make treatment decisions on behalf of the patient. The Institute may review any other data related to end-of-life medical care and treatment the Institute determines is relevant.

"The purpose of this study is to determine whether statutory changes related to advance directives and health care powers of attorney impact the type and quantity of end-of-life medical care provided to patients, whether the patient's or patient representative's express wishes regarding the provision of treatment at the end of life are being honored, and whether there is any change in the number of persons who request continued treatment at the end of their lives, but do not receive that treatment.

"The Institute shall report its findings to the following entities no later than January 30, 2013:

"(1) The 2013 General Assembly.

"(2) The North Carolina Bar Association.

"(3) The North Carolina Medical Society."

CASE NOTES

Subsection (a) sets a level of care to which each person receiving services from a facility is entitled and if the person is no longer entitled to receive services, they have no entitlement to treatment or care pursuant to this subsection. In re Royal, 128 N.C. App. 645, 495 S.E.2d 404 (1998).

§ 122C-58. Civil rights and civil remedies.

Except as otherwise provided in this Chapter, each adult client of a facility keeps the same right as any other citizen of North Carolina to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, register and vote, bring civil actions, and marry and get a divorce, unless the exercise of a civil right has been precluded by an unrevoked adjudication of incompetency. This section shall not be construed as validating the act of any client who was in fact incompetent at the time he performed the act. (1973, c. 475, s. 1; c. 1436, ss. 2-5; 1985, c. 589, s. 2.)

CASE NOTES

***Editor's Note.** — The case annotated below was decided under former statutory provisions.*

Prisoners receiving mental health care were not covered by former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients who were not imprisoned with the Department of Correction. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources, G.S. 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

§ 122C-59. Use of corporal punishment.

Corporal punishment may not be inflicted upon any client. (1973, c. 475, s. 1; 1985, c. 589, s. 2.)

§ 122C-60. Use of physical restraints or seclusion.

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. For purposes of this section, a technique to reenact the birthing process as defined by G.S. 14-401.21 is not a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(a1) A facility that employs physical restraint or seclusion of a client shall collect data on the use of the restraints and seclusion. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Secretary upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary under this subsection. In reviewing data requested under this subsection, the Secretary shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection.

(a2) Facilities shall implement policies and practices that emphasize the use of alternatives to physical restraint and seclusion. Physical restraint and seclusion may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.

(b) The Commission shall adopt rules to implement this section. In adopting rules, the Commission shall take into consideration federal regulations and national accreditation standards. Rules adopted by the Commission shall include:

(1) Staff training and competence in:
  a. The use of positive behavioral supports.
  b. Communication strategies for defusing and deescalating potentially dangerous behavior.
  c. Monitoring vital indicators.
  d. Administration of CPR.

e. Debriefing with client and staff.
f. Methods for determining staff competence, including qualifications of trainers and training curricula.
g. Other areas to ensure the safe and appropriate use of restraints and seclusion.

(2) Other matters relating to the use of physical restraint or seclusion of clients necessary to ensure the safety of clients and others.

The Department may investigate complaints and inspect a facility at any time to ensure compliance with this section. (1973, c. 475, s. 1; 1985, c. 589, s. 2; 2000-129, s. 1; 2003-205, s. 2.)

Editor's Note. — The preamble to Session Laws 2003-205, provides: "Whereas, United States Representative Sue Myrick, a member of the North Carolina congressional delegation, introduced House Concurrent Resolution 435 in Congress encouraging states to outlaw 'rebirthing'; and

"Whereas, the United States Congress adopted House Concurrent Resolution 435, which passed the House of Representatives by a vote of 397-0; and

"Whereas, in House Concurrent Resolution 435, the United States Congress expressed the sense that the technique known as 'rebirthing', a form of 'attachment therapy', is a dangerous and harmful practice and should be prohibited; and

"Whereas, on April 18, 2000, Candace Newmaker, a child from North Carolina, died from use of the 'rebirthing technique', and four other children have died from other forms of 'attachment therapy'; and

"Whereas, the American Psychological Association does not recognize 'rebirthing' as proper treatment; Now, therefore,

"The General Assembly of North Carolina enacts:"

CASE NOTES

Standard of Liability. — Adopting the standard enunciated in Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), the court held that so long as the requisite procedures were followed, and the decision to restrain a plaintiff, a voluntarily admitted patient at a state mental hospital, was an exercise of professional judgment, the defendants were not liable to the plaintiff for their actions. Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

§ 122C-61. Treatment rights in 24-hour facilities.

In addition to the rights set forth in G.S. 122C-57, each client who is receiving services at a 24-hour facility has the following rights:

(1) The right to receive necessary treatment for and prevention of physical ailments based upon the client's condition and projected length of stay. The facility may seek to collect appropriate reimbursement for its costs in providing the treatment and prevention; and

(2) The right to have, as soon as practical during treatment or habilitation but not later than the time of discharge, an individualized written discharge plan containing recommendations for further services designed to enable the client to live as normally as possible. A discharge plan may not be required when it is not feasible because of an unanticipated discontinuation of a client's treatment. With the consent of the client or his legally responsible person, the professionals responsible for the plans shall contact appropriate agencies at the client's destination or in his home community before formulating the recommendations. A copy of the plan shall be furnished to the client or to his legally responsible person and, with the consent of the client, to the client's next of kin. (1973, c. 475, s. 1; c. 1436, ss. 6, 7; 1981, c. 328, ss. 1, 2; 1985, c. 589, s. 2.)

§ 122C-62. Additional rights in 24-hour facilities.

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, developmental disabilities, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and possessions, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Keep and spend a reasonable sum of his own money;

(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and

(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Part.

The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;

(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and

(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;

(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;

(4) Receive special education and vocational training in accordance with federal and State law;

(5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;

(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision, unless the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

(7) Participate in religious worship;

(8) Have access to individual storage space for the safekeeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b)(2), (b)(3), and (d)(3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), (d)(5) and (d)(8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section. (1973, c. 475, s. 1; c. 1436, ss. 2-5, 8; 1985, c. 589, s. 2; 1989, c. 625, s. 10; 1995, c. 299, s. 2; 1997-456, s. 27.)

Editor's Note. — As the text that formerly made up this Article has been recodified as Part 1 of this article by Session Laws 1997-442, the term "this Part" was substituted for "this Article" in the third sentence of subsection (c) by direction of the Revisor of Statutes.

CASE NOTES

Editor's Note. — *One of the cases annotated below was decided under former statutory provisions.*

Prisoners receiving mental health care were not covered by former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62); the statutes applied only to mental health patients who were not imprisoned with the Department of Correction. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources, G.S. 143B-261.1 and the regulations adopted pursuant thereto apply, rather than former G.S. 122-36 (see now G.S. 122C-3) and former G.S. 122-55.2 (see now G.S. 122C-53, 122C-58, and 122C-62), as they do to those prisoners who remained in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412, cert. denied, 305 N.C. 759, 292 S.E.2d 574 (1982).

Unsupervised Pass Denied. — Trial court did not err in denying recommendation of unsupervised passes for a not guilty by reason of insanity patient; G.S. 122C-62(b)(4) required court approval via a court order prior to the patient being granted visits outside the custody of the facility, and visits outside the custody of the facility included unsupervised passes or visits on the hospital premises in addition to off-campus visits. In re Williamson, 151 N.C. App. 260, 564 S.E.2d 915, 2002 N.C. App. LEXIS 711 (2002).

OPINIONS OF ATTORNEY GENERAL

Right to Choose Attorney. — A minor client who is receiving treatment or habilitation from a 24-hour facility, as that term is defined in G.S. 122C-3(14)g, does not have the right to choose at his or her own expense or the expense of his or her legally responsible person, an attorney of the minor client's choice. The legally responsible person is the only one who can choose an attorney for the minor client unless the minor is over the age of 16 and emancipated. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

Protection of Child's Rights. — Although a minor cannot obtain legal representation without the consent of the legally responsible person, the rights of the child can be adequately protected. First, the Department of Social Services can conduct an investigation of the legally responsible person pursuant to G.S. 7A-542 et seq. [see now G.S. 7B-300 et seq.], the guardian ad litem program can provide additional support for abused, neglected, or dependent juveniles, including legal support and, a minor receives representation for the commitment proceedings by virtue of G.S. 122C-224.1 and G.S. 122C-270. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

§ 122C-63. Assurance for continuity of care for individuals with mental retardation.

(a) Any individual with mental retardation admitted for residential care or treatment for other than respite or emergency care to any residential facility operated under the authority of this Chapter and supported all or in part by state-appropriated funds has the right to residential placement in an alternative facility if the client is in need of placement and if the original facility can no longer provide the necessary care or treatment.

(b) The operator of a residential facility providing residential care or treatment, for other than respite or emergency care, for individuals with mental retardation shall notify the area authority serving the client's county of residence of his intent to close a facility or to discharge a client who may be in need of continuing care at least 60 days prior to the closing or discharge.

The operator's notification to the area authority of intent to close a facility or to discharge a client who may be in need of continuing care constitutes the operator's acknowledgement of the obligation to continue to serve the client until:

(1) The area authority determines that the client is not in need of continuing care;
(2) The client is moved to an alternative residential placement; or
(3) Sixty days have elapsed;

whichever occurs first.

In cases in which the safety of the client who may be in need of continuing care, of other clients, of the staff of the residential facility, or of the general public, is concerned, this 60-day notification period may be waived by securing an emergency placement in a more secure and safe facility. The operator of the residential facility shall notify the area authority that an emergency placement has been arranged within 24 hours of the placement. The area authority and the Secretary shall retain their respective responsibilities upon receipt of this notice.

(c) An individual who may be in need of continuing care may be discharged from a residential facility without further claim for continuing care against the area authority or the State if:

(1) After the parent or guardian, if the client is a minor or an adjudicated incompetent adult, or the client, if an adult not adjudicated incompetent, has entered into a contract with the operator upon the client's admission to the original residential facility the parent, guardian, or client who entered into the contract refuses to carry out the contract, or
(2) After an alternative placement for a client in need of continuing care is located, the parent or guardian who admitted the client to the residential facility, if the client is a minor or an adjudicated incompetent adult, or the client if an adult not adjudicated incompetent, refuses the alternative placement.

(d) Decisions made by the area authority regarding the need for continued placement or regarding the availability of an alternative placement of a client may be appealed pursuant to the appeals process of the area authority and subsequently to the Secretary or the Commission under their rules. If the appeal process extends beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange a temporary placement in a State facility for the mentally retarded pending the outcome of the appeal.

(e) The area authority that serves the county of residence of the client is responsible for assessing the need for continuity of care and for the coordination of the placement among available public and private facilities whenever the authority is notified that a client may be in need of continuing care. If an alternative placement is not available beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange for a temporary placement in a State facility for the mentally retarded. The area authority shall retain responsibility for coordination of placement during a temporary placement in a State facility.

(f) The Secretary is responsible for coordinative and financial assistance to the area authority in the performing of its duties to coordinate placement so as to assure continuity of care and for assuring a continuity of care placement beyond the operator's 60-day obligation period.

(g) The area authority's financial responsibility, through local and allocated State resources, is limited to:

(1) Costs relating to the identification and coordination of alternative placements;
(2) If the original facility is an area facility, maintenance of the client in the original facility for up to 60 days; and
(3) Release of allocated categorical State funds used to support the care or treatment of the specific client at the time of alternative placement if the Secretary requires the release.

(h) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and, in accordance with G.S. 122C-112(a)(6), the Secretary shall adopt budgetary rules to implement this section. (1981, c. 1012; 1985, c. 589, s. 2.)

§ 122C-64. Client rights and human rights committees.

Client rights and human rights committees responsible for protecting the rights of clients shall be established at each State facility, for each local management entity, and provider agency. The Commission shall adopt rules for the establishment, composition, and duties of the committees and procedures for appointment and coordination with the State and Local Consumer Advocacy programs. The membership of the client rights and human rights committee for a multicounty program or local management entity shall include a representative from each of the participating counties. (1985-589, s. 2; 2001-437, s. 1.3; 2009-190, s. 1.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Effect of Amendments. — Session Laws 2009-190, s. 1, effective June 26, 2009, inserted "Client rights and" in the section catchline; in the first sentence, substituted "Client rights and human rights" for "Human rights" at the beginning, and "facility, for each local management entity, and provider agency" for "facility and for each area authority and county program" at the end, rewrote the last sentence which read: "In multicounty area authorities and multicounty programs, the membership of the human rights committee shall include a representative from each of the participating counties."

§ 122C-65. Offenses relating to clients.

(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a developmentally disabled client in a facility:

(1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;
(2) To transport or to offer to transport a client of a facility to or from any place without the facility's authority;

(3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;

(4) To hide an individual who has left a facility without authority; or

(5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense.

(b) Violation of this section is a Class 1 misdemeanor. (1899, c. 1, s. 53; Rev., s. 3694; C.S., s. 6171; 1963, c. 1184, ss. 1, 6; 1985, c. 589, s. 2; 1989, c. 625, s. 11; 1993, c. 539, s. 921; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 122C-66. Protection from abuse and exploitation; reporting.

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client or borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of a facility who witnesses or has knowledge of a violation of subsection (a) or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without his consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which a reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(f) The facility shall investigate or provide for the investigation of all reports made under the provisions of this section. (1985, c. 589, s. 2; 1993, c. 539, ss. 922, 923; 1994, Ex. Sess., c. 24, s. 14(c); 1998-202, s. 13(ee).)

CASE NOTES

Cause of Action Under Section. — While this section requires reporting of known or suspected abuse of patients in facilities subject to the licensing requirements of this Chapter, such as the Alcohol Rehabilitation Center, the language of this provision does not create a cause of action for retaliatory discharge against an employer by an employee discharged in retaliation for reporting suspected patient abuse. Lenzer v. Flaherty, 106 N.C. App. 496, 418 S.E.2d 276, cert. denied, 332 N.C. 345, 421 S.E.2d 348 (1992).

Discharge resulting from a report made pursuant to this section would give rise to a cause of action for wrongful discharge under the public policy exception to the at-will doctrine.

Lenzer v. Flaherty, 106 N.C. App. 496, 418 S.E.2d 276, cert. denied, 332 N.C. 345, 421 S.E.2d 348 (1992).

§ 122C-67. Other rules regarding abuse, exploitation, neglect not prohibited.

G.S. 122C-66 does not prohibit the Commission from adopting rules for State and area facilities and does not prohibit other facilities from issuing policies regarding other forms of prohibited abuse, exploitation, or neglect. (1985, c. 589, s. 2.)

§§ 122C-68 through 122C-70: Reserved for future codification purposes.

Part 2. Advance Instruction for Mental Health Treatment.

§ 122C-71. Purpose.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's mental health care.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control. (1997-442, s. 2; 1998-198, s. 2.)

Legal Periodicals. — See legislative survey, 21 Campbell L. Rev. 323 (1999).

§ 122C-72. Definitions.

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Advance instruction for mental health treatment" or "advance instruction" means a written instrument, signed in the presence of two qualified witnesses who believe the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable.

(2) "Attending physician" means the physician who has primary responsibility for the care and treatment of the principal.

(3) Repealed by Session Laws 1998-198, s. 2, effective October 1, 1998.

(4) "Incapable" means that, in the opinion of a physician or eligible psychologist, the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment deci-

sions. As used in this Part, the term "eligible psychologist" has the meaning given in G.S. 122C-3(13d).

(5) "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. "Mental health treatment" includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred to as "shock treatment", treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

(6) "Principal" means the person making the advance instruction.

(7) "Qualified witness" means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:
   a. The attending physician or mental health service provider or an employee of the physician or mental health treatment provider;
   b. An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident; or
   c. Related within the third degree to the principal or to the principal's spouse. (1997-442, s. 2; 1998-198, s. 2.)

§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.

(a) Any adult of sound mind may make an advance instruction regarding mental health treatment. The advance instruction may include consent to or refusal of mental health treatment.

(b) An advance instruction may include, but is not limited to, the names and telephone numbers of individuals to be contacted in case of a mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications that the principal is taking or has taken in the past and the effects of those medications.

(c) An individual shall not be required to execute or to refrain from executing an advance instruction as a condition for insurance coverage, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(c1) A principal, through an advance instruction, may grant or withhold authority for mental health treatment, including, but not limited to, the use of psychotropic medication, electroconvulsive treatment, and admission to and retention in a facility for the care or treatment of mental illness.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the guardian shall follow the advance instruction consistent with G.S. 35A-1201(a)(5).

(f) An advance instruction for mental health treatment may be combined with a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes so long as each form shall be executed in accordance with its own statute. (1997-442, s. 2; 1998-198, s. 2.)

§ 122C-74. Effectiveness and duration; revocation.

(a) A validly executed advance instruction becomes effective upon its proper execution and remains valid unless revoked.

(b) The attending physician or other mental health treatment provider may consider valid and rely upon an advance instruction, or a copy of that advance instruction that is obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes, in the absence of actual knowledge of its revocation or invalidity.

(c) An attending physician or other mental health treatment provider may presume that a person who executed an advance instruction in accordance with this Part was of sound mind and acted voluntarily when he or she executed the advance instruction.

(d) An attending physician or other mental health treatment provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. If a patient is incapable, an advance instruction executed in accordance with this Article is presumed to be valid.

(e) The attending physician or mental health treatment provider shall continue to obtain the principal's informed consent to all mental health treatment decisions when the principal is capable of providing informed consent or refusal, as required by G.S. 122C-57. Unless the principal is deemed incapable by the attending physician or eligible psychologist, the instructions of the principal at the time of treatment shall supersede the declarations expressed in the principal's advance instruction.

(f) The fact of a principal's having executed an advance instruction shall not be considered an indication of a principal's capacity to make or communicate mental health treatment decisions at such times as those decisions are required.

(g) Upon being presented with an advance instruction, an attending physician or other mental health treatment provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, an attending physician or other mental health treatment provider shall comply with the advance instruction unless:

(1) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with generally accepted community practice standards of treatment to benefit the principal;
(2) Compliance is not consistent with the availability of treatments requested;
(3) Compliance is not consistent with applicable law;
(4) The principal is committed to a 24-hour facility pursuant to Article 5 of Chapter 122C of the General Statutes, and treatment is authorized in compliance with G.S. 122C-57 and rules adopted pursuant to it; or
(5) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with appropriate treatment in case of an emergency endangering life or health.

In the event that one part of the advance instruction is unable to be followed because of one or more of the above, all other parts of the advance instruction shall nonetheless be followed.

(h) If the attending physician or other mental health treatment provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (5) of subsection (g), the attending physician or other mental health care treatment provider shall promptly notify the principal and, if applicable, the health care agent and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.

(i) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(j) An advance instruction may be revoked at any time by the principal so long as the principal is not incapable. The principal may exercise this right of revocation in any manner by which the principal is able to communicate an intent to revoke and by notifying the revocation to the treating physician or other mental health treatment provider. The attending physician or other mental health treatment provider shall note the revocation as part of the principal's medical record. (1997-442, s. 2; 1998-198, s. 2; 2001-455, s. 5; 2001-513, s. 30(b).)

§ 122C-75. Reliance on advance instruction for mental health treatment.

(a) An attending physician or eligible psychologist who in good faith determines that the principal is or is not incapable for the purpose of deciding whether to proceed or not to proceed according to an advance instruction, is not subject to criminal prosecution, civil liability, or professional disciplinary action for making and acting upon that determination.

(b) In the absence of actual knowledge of the revocation of an advance instruction, no attending physician or other mental health treatment provider shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the provision of treatment to a principal in accordance with this Part unless the absence of actual knowledge resulted from the negligence of the attending physician or mental health treatment provider.

(c) An attending physician or mental health treatment provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

(d) No attending physician or mental health treatment provider who administers or does not administer treatment under authorization obtained pursuant to this Part shall incur liability arising out of a claim to the extent that the claim is based on lack of informed consent or authorization for this action.

(e) This section shall not be construed as affecting or limiting any liability that arises out of a negligent act or omission in connection with the medical diagnosis, care, or treatment of a principal under an advance instruction or that arises out of any deviation from reasonable medical standards. (1997-442, s. 2; 1998-198, s. 2.)

§ 122C-76. Penalty.

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision. (1997-442, s. 2.)

§ 122C-77. Statutory form for advance instruction for mental health treatment.

(a) This Part shall not be construed to invalidate an advance instruction for mental health treatment that was executed prior to January 1, 1999, and was otherwise valid.

(b) The use of the following or similar form after the effective date of this Part in the creation of an advance instruction for mental health treatment is lawful, and, when used, it shall specifically meet the requirements and be construed in accordance with the provisions of this Part.

"ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, ________, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal. "Mental health treatment" includes electroconvulsive treatment (ECT), commonly referred to as "shock treatment", treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

I understand that under G.S. 122C-57, other than for specific exceptions stated there, mental health treatment may not be administered without my express and informed written consent or, if I am incapable of giving my informed consent, the express and informed consent of my legally responsible person, my health care agent named pursuant to a valid health care power of attorney, or my consent expressed in this advance instruction for mental health treatment.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding psychoactive medications are as follows: (Place initials beside choice.)

____ I consent to the administration of the following medications:

____

____

____ I do not consent to the administration of the following medications:

____

____

Conditions or limitations: ________________________

____

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows: (Place initials beside choice.)

____ I consent to being admitted to a health care facility for mental health treatment.

My facility preference is ______________________________
____ I do not consent to being admitted to a health care facility for mental health treatment.
This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.
Conditions or limitations ______________________________
____

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.
In case of mental health crisis, please contact:

1. Name: ______________________________
   Home Address: ______________________________
   Home Telephone Number: ____________ Work Telephone Number: ____________
   Relationship to Me: ______________________________
2. Name: ______________________________
   Home Address: ______________________________
   Home Telephone Number: ____________ Work Telephone Number: ____________
   Relationship to Me: ______________________________
3. My Physician:
   Name: ______________________________
   Telephone Number: ______________________________
4. My Therapist:
   Name: ______________________________
   Telephone Number: ______________________________

The following may cause me to experience a mental health crisis: ____________
____
____

The following may help me avoid a hospitalization: ____________
____
____

I generally react to being hospitalized as follows: ____________
____
____

Staff of the hospital or crisis unit can help me by doing the following: ____________
____
____
____

I give permission for the following person or people to visit me: ____________
____
____

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as "shock treatment"): ____________
____
____
____
____

Other instructions: ______________________________
____
____
____

____ I have attached an additional sheet of instructions to be followed and considered part of this advance instruction.

SHARING OF INFORMATION BY PROVIDERS

I understand that the information in this document may be shared by my mental health treatment provider with any other mental health treatment provider who may serve me when necessary to provide treatment in accordance with this advance instruction.

Other instructions about sharing of information:

____

____

SIGNATURE OF PRINCIPAL

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full impact of having made this advance instruction for mental health treatment.

____

Signature of Principal Date

NATURE OF WITNESSES

I hereby state that the principal is personally known to me, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in my presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that I am not:

a. The attending physician or mental health service provider or an employee of the physician or mental health treatment provider;
b. An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident; or
c. Related within the third degree to the principal or to the principal's spouse.

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:

A person appointed as an attorney-in-fact by this document;
The principal's attending physician or mental health service provider or a relative of the physician or provider;
The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or
A person related to the principal by blood, marriage, or adoption.

Witnessed by:
Witness: ________________________ Date: __________
Witness: ________________________ Date: __________
STATE OF NORTH CAROLINA
COUNTY OF ____________________

CERTIFICATION OF NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF

I, ____________, a Notary Public for the County cited above in the State of North Carolina, hereby certify that ____________ appeared before me and swore or affirmed to me and to the witnesses in my presence that this instrument is an advance instruction for mental health treatment, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that ____________ and ____________, witnesses, appeared before me and swore or affirmed that they witnessed ____________ sign the attached advance instruction for mental health treatment, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing they were not (i) the attending physician or mental health treatment provider or an employee of the physician or mental health treatment provider and (ii) they were not an owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident, and (iii) they were not related within the third degree to the principal or to the principal's spouse. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This is the ____________ day of ____________, ____________________________

____

Notary Public

My Commission expires:

NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates an instruction for mental health treatment. Before signing this document you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment. The instructions you include in this declaration will be followed if a physician or eligible psychologist determines that you are incapable of making and communicating treatment decisions. Otherwise you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held in accordance with civil commitment law. Under the Health Care Power of Attorney you may also appoint a person as your health care agent to make treatment decisions for you if you become incapable. You have the right to revoke this document at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THIS ADVANCE INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A PHYSICIAN OR OTHER AUTHORIZED MENTAL HEALTH TREATMENT PROVIDER. A revocation is effective when it is communicated to your attending physician or other provider. The physician or other provider shall note the revocation in your medical record. To be valid, this advance instruction must be signed by two qualified witnesses, personally known to you, who are present when you sign or acknowledge your signature. It must also be acknowledged before a notary public.

NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT PROVIDER

Under North Carolina law, a person may use this advance instruction to provide consent for future mental health treatment if the person later becomes incapable of making those decisions. Under the Health Care Power of Attorney the person may also appoint a health care agent to make mental health treatment decisions for the person when incapable. A person is "incapable" when in the opinion of a physician or eligible psychologist the person currently

lacks sufficient understanding or capacity to make and communicate mental health treatment decisions. This document becomes effective upon its proper execution and remains valid unless revoked. Upon being presented with this advance instruction, the physician or other provider must make it a part of the person's medical record. The attending physician or other mental health treatment provider must act in accordance with the statements expressed in the advance instruction when the person is determined to be incapable, unless compliance is not consistent with G.S. 122C-74(g). The physician or other mental health treatment provider shall promptly notify the principal and, if applicable, the health care agent, and document noncompliance with any part of an advance instruction in the principal's medical record. The physician or other mental health treatment provider may rely upon the authority of a signed, witnessed, dated, and notarized advance instruction, as provided in G.S. 122C-75."
(1997-442, s. 2; 1998-198, s. 2; 1998-217, s. 53(a)(5).)

Editor's Note. — Session Laws 1998-217, s. 53(a)(5) provides: "The Revisor of Statutes may delete from G.S. 122C-77, as rewritten by Section 2 of that act, any lines on the form to be filled in where it was clearly intended that those lines be deleted but which do not appear to be stricken through because of formatting."

§§ 122C-78, 122C-79: Reserved for future codification purposes.

Article 3A.

Miscellaneous Provisions.

§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. — As used in this section, the term "provider" applies to an area authority/county program and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter.

(b) Requirement. — An offer of employment by a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of a provider a State criminal history record check required by this section without the provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section. For purposes of this subsection, the term “private entity” means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency.

(c) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the provider shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the provider. If the provider disqualifies an applicant after consideration of the relevant factors, then the provider may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. — A provider and an officer or employee of a provider that, in good faith, complies with this section shall be immune from civil liability for:

(1) The failure of the provider to employ an individual on the basis of information provided in the criminal history record check of the individual.
(2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(e) Relevant Offense. — As used in this section, “relevant offense” means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. — A provider may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The provider shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The provider shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment. (2000-154, s. 4; 2001-155, s. 1; 2004-124, ss. 10.19D(c), (h); 2005-4, ss. 1, 2, 3, 4, 5(a); 2007-444, s. 3.)

§ 122C-81. National accreditation benchmarks.

(a) As used in this section, the term:

(1) "National accreditation" applies to accreditation by an entity approved by the Secretary that accredits mental health, developmental disabilities, and substance abuse services.

(2) "Provider" applies to only those providers of services, including facilities, requiring national accreditation, which services are designated by the Secretary pursuant to subsection (b) of this section.

(b) The Secretary, through the Medicaid State Plan, Medicaid waiver, or rules adopted by the Secretary, shall designate the mental health, developmental disabilities, and substance abuse services that require national accreditation.

(c) Providers enrolled with the Medicaid program prior to July 1, 2008, and providing services that require national accreditation approved by the Secretary pursuant to subsection (b) of this section, shall successfully complete national accreditation requirements within three years of enrollment with the Medicaid program. Providers shall meet the following benchmarks to ensure continuity of care for consumers in the event the provider does not make sufficient progress in achieving national accreditation in a timely manner:

(1) Nine months prior to the accreditation deadline — Formal selection of an accrediting agency as documented by a letter from the agency to the provider acknowledging the provider's selection of that accrediting agency. A provider failing to meet this benchmark shall be

prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer all the provider's entire case load to another provider within four months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than twenty-five percent (25%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within four months of the provider's failure to meet the benchmark.

(2) Six months prior to the accreditation deadline — An on-site accreditation review scheduled by the accrediting agency as documented by a letter from the agency to the facility. A provider failing to meet this benchmark will be prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer the provider's entire case load to another provider within three months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than thirty-three percent (33%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within three months of the provider's failure to meet the benchmark.

(3) Three months prior to the accreditation deadline — Completion of an on-site accreditation review, receipt of initial feedback from accrediting agency, and submission of a Plan of Correction for any deficiencies noted by the accrediting agency. A provider failing to meet this benchmark shall be prohibited from admitting new clients to service. If a provider fails to meet this benchmark, then the LMEs shall work with the provider to transfer the provider's entire case load to another provider within two months of the date of the provider's failure to meet the benchmark. The transfer of the case load shall be in increments such that not fewer than fifty percent (50%) of the provider's total caseload shall be transferred per month. The Department shall terminate the provider's enrollment in the Medicaid program within two months of the provider's failure to meet the benchmark.

(4) Accreditation deadline — Approval as fully accredited by the national accrediting agency. A provider failing to meet this requirement shall be prohibited from admitting new clients to service. The LMEs will work with a provider failing to meet this deadline to transition clients currently receiving service to other providers within 60 days. The Department shall terminate the provider's enrollment in the Medicaid program within 60 days of the provider's failure to meet the benchmark.

(5) A provider that has its enrollment terminated in the Medicaid program as a result of failure to meet benchmarks for national accreditation or failure to continue to be nationally accredited may not apply for re-enrollment in the Medicaid program for at least one year following its enrollment termination.

(d) Providers enrolled in the Medicaid program or contracting for State-funded services on or after July 1, 2008, and providing services which require national accreditation shall successfully complete all accreditation requirements and be awarded national accreditation within one year of enrollment in the Medicaid program or within two years following the provider's first contract to deliver a State-funded service requiring national accreditation. Providers providing services that require national accreditation shall be required to discontinue service delivery and shall have their Medicaid enrollment and any service contracts terminated if they do not meet the following benchmarks for demonstrating sufficient progress in achieving national accreditation following the date of enrollment in the Medicaid program or initial contract for State-funded services:

(1) Three months — On-site accreditation review scheduled by accrediting agency as documented by a letter from the agency to the provider and completion of self-study and self-evaluation protocols distributed by the selected accrediting agency.

(2) Six months — On-site accreditation review scheduled by accrediting agency as documented by a letter from the agency to the provider.

(3) Nine months — Completion of on-site accreditation review, receipt of initial feedback from accrediting agency, plan to address any deficiencies identified developed.

(4) If a provider's Medicaid enrollment or service delivery contracts are terminated as a result of failure to meet accreditation benchmarks or failure to continue to be nationally accredited, the provider will work with the LME to transition consumers served by the provider to other service providers in an orderly fashion within 60 days of notification by the LME of such failure.

(5) A provider that has its Medicaid enrollment or service delivery contracts terminated as a result of failure to meet accreditation benchmarks or failure to continue to be nationally accredited may not reapply for enrollment in the Medicaid program or enter into any new service delivery contracts for at least one year following enrollment or contract termination. (2008-107, s. 10.15A(c).)

Editor's Note. — Session Laws 2008-107, s. 30.6, made this section effective July 1, 2008.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 1. Policy.

§ 122C-101. Policy.

Within the public system of mental health, developmental disabilities, and substance abuse services, there are area, county, and State facilities. An area authority or county program is the locus of coordination among public services for clients of its catchment area. (1985, c. 589, s. 2; 1989, c. 625, s. 13; 1993, c. 396, s. 3; 2001-437, s. 1.4.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2007-323, s. 10.53A(a)-(e), provides: "(a) The three hundred thousand dollars ($300,000) appropriated in this act to the Department of Health and Human Services for allocation to the North Carolina Institute of Medicine (NC IOM) shall be used by the IOM to hire new staff, to undertake additional studies annually at the request of the General Assembly, and to support a rapid-response capacity to analyze secondary data sources on health or health-related data to the General Assembly and to State and local government agencies.

"(b) The North Carolina Institute of Medicine shall use a portion of the funds allocated to it in subsection (a) of this section to convene a task force to study substance abuse services in North Carolina. The NC IOM shall provide staff and arrange for meeting facilities for the Task Force.

"(c) The Task Force shall include the following:

"(1) Members of the North Carolina Senate and the North Carolina House of Representatives. Senate members shall be appointed by the President Pro Tempore of the Senate. Members of the House of Representatives shall be appointed by the Speaker of the House of Representatives.

"(2) Representatives of the North Carolina Department of Health and Human Services, local management entities, the North Carolina Department of Justice, the NC Office of the Attorney General, the North Carolina Community College System, and the North Carolina Department of Public Instruction.

"(3) Providers of substance abuse services, academics and researchers with substance abuse expertise, local governmental agencies, business and industry, domestic violence organizations, consumer and family members, and other interested members of the public.

"The IOM shall appoint as cochairs of the Task Force one member of the North Carolina House of Representatives, one member of the North Carolina Senate, and one member who provides substance abuse services selected from the Task Force.

"(d) The Task Force shall:

"(1) Identify the continuum of services needed for treatment of substance abuse services, including, but not limited to, prevention, outpatient services, residential treatment, and recovery supports. The Task Force shall examine what public and private organizations currently provide services, where services are offered, and gaps in the current service delivery system. The Task Force shall examine services that are available through public and private systems, but shall focus on the availability of substance abuse services through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and local management entities. The Task Force shall identify which services should be available locally throughout the State, and which services should be offered regionally or statewide.

"(2) Identify evidence-based models of care or promising practices in coordination with the NC Practice Improvement Collaborative for the prevention and treatment of substance abuse and develop recommendations to incorporate these models into the current substance abuse service system of care.

"(3) Examine different financing options to pay for substance abuse services at the local, regional, and State levels. The Task Force shall also consider different reimbursement methodology, including, but not limited to, fee-for-service, grant funding, case rates, and capitation.

"(4) Examine the adequacy of the current and future substance abuse workforce, including, but not limited to, credentialed substance abuse counselors, availability of substance abuse workers throughout the State, and reimbursement levels. The Task Force shall develop a workforce education plan, if needed, to address current or future workforce shortages.

"(5) Develop strategies to identify people in need of substance abuse services, including people who are dually diagnosed as having mental health and substance abuse problems. In addition, the Task Force shall examine strategies for providing substance abuse services to people with substance abuse problems identified through the State hospitals, and the judicial and social services systems.

"(6) Examine barriers that people with substance abuse problems have in accessing publicly funded substance abuse services and explore possible strategies for improving access.

"(7) Examine current outcome measures and identify other appropriate outcome measures to assess the effectiveness of substance abuse services, if necessary.

"(8) Examine the economic impact of substance abuse in North Carolina. If data are available, the Task Force shall estimate the impact of substance abuse on the court system, health care system (e.g., through preventable hospitalizations), social services, and worker productivity.

"(9) Make recommendations on the implementation of a cost-effective plan for prevention, early screening, diagnosis, and treatment of North Carolinians with substance abuse problems. In so doing, the Task Force shall identify any policy changes needed to implement the plan and develop cost estimates associated with different recommendations. The Task Force shall also examine existing public and private financing options and explore how existing funding could be used more effectively to pay for the recommended services.

"(e) The North Carolina Institute of Medicine's Substance Abuse Services Task Force shall submit its interim report and recommendations to the 2008 General Assembly upon its convening and to the chairs of the Senate Health Committee, the House of Representatives Health Committee, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Governor. The final report shall be submitted no later than the convening of the 2009 General Assembly. Upon submission of this report, the Task Force shall terminate."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

CASE NOTES

Cited in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772, 1999 N.C. App. LEXIS 899 (1999).

§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services; system performance measures.

(a) Purpose of State Plan. — The Department shall develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The purpose of the State Plan is to provide a strategic template regarding how State and local resources shall be organized and used to provide services. The State Plan shall be issued every three years beginning July 1, 2007. It shall identify specific goals to be achieved by the Department, area authorities, and county program's over a three-year period of time and benchmarks for determining whether progress is being made towards those goals. It shall also identify data that will be used to measure progress towards the specified goals. In order to increase the ability of the State, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, the Department shall not adopt or implement policies that are inconsistent with the State Plan without first consulting with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Content of State Plan. — The State Plan shall include the following:

(1) Vision and mission of the State Mental Health, Developmental Disabilities, and Substance Abuse Services system.

(2) Repealed by Session Laws 2006-142, s. 2(a), effective July 19, 2006.

(3) Protection of client rights and consumer involvement in planning and management of system services.

(4) Provision of services to targeted populations, including criteria for identifying targeted populations.

(5) Compliance with federal mandates in establishing service priorities in mental health, developmental disabilities, and substance abuse.

(6) Description of the core services that are available to all individuals in order to improve consumer access to mental health, developmental disabilities, and substance abuse services at the local level.

(7) Service standards for the mental health, developmental disabilities, and substance abuse services system.

(8) Implementation of the uniform portal process.

(9) Strategies and schedules for implementing the service plan, including consultation on Medicaid policy with area and county programs, qualified providers, and others as designated by the Secretary, intersystem collaboration, promotion of best practices, technical assistance, outcome-based monitoring, and evaluation.

(10) A plan for coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the Medicaid State Plan, and NC Health Choice.

(11) A business plan to demonstrate efficient and effective resource management of the mental health, developmental disabilities, and substance abuse services system, including strategies for accountability for non-Medicaid and Medicaid services.

(12) Strategies and schedules for implementing a phased in plan to eliminate disparities in the allocation of State funding across county programs and area authorities by January 1, 2007, including methods to identify service gaps and to ensure equitable use of State funds to fill those gaps among all counties.

(c) State Performance Measures. — The State Plan shall also include a mechanism for measuring the State's progress towards increased performance on the following matters: access to services, consumer-focused outcomes, individualized planning and supports, promotion of best practices, quality management systems, system efficiency and effectiveness, and prevention and early intervention. Beginning October 1, 2006, and every six months thereafter, the Secretary shall report to the General Assembly and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, on the State's progress in these performance areas. (2001-437, s. 1.5; 2006-142, s. 2(a).)

Adult Care Home Model for Community-Based Services. —

Session Laws 2001-424, s. 21.54(a) and (b) contained similar provisions.

Session Laws 2001-424, s. 21.58(b), provides: "The Secretary of the Department of Health and Human Services shall develop a plan, after consultation with advocacy groups and affected State and local agencies and programs concerned with the mental health, developmental disabilities, and substance abuse services needs of the State, for the use of funds from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs established under G.S. 143D-15D to meet the mental health needs of the State. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102, if enacted in House Bill 381 of the 2001 General Assembly. Funds shall not be transferred from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services."

Mental Retardation Center Downsizing. — Session Laws 2003-284, ss. 10.14(a) through (d), provide: "(a) In accordance with the Department of Health and Human Services' plan for downsizing the State's regional mental retardation facilities by four percent (4%) each year, the Department shall implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The Department shall manage the client population of the mental retardation centers in order to ensure that placements for ICF/MR level of care shall be made in non-State facilities. Admissions to State ICF/MR facilities are permitted only as a last resort and only upon approval of the Department. The corresponding budgets for each of the State mental retardation centers shall be reduced and positions shall be eliminated as the census of each facility decreases. At no time shall mental retardation center positions be transferred to other units within a facility or assigned nondirect care activities such as outreach.

"(b) Any savings in State appropriations in each year of the 2003-2005 fiscal biennium that result from reductions in beds or services shall be applied as follows:

"(1) Nonrecurring savings shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs and shall be used to facilitate the transition of clients into appropriate community-based services and support in accordance with G.S. 143-15.3D; and

"(2) Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W. In determining the savings in this section, savings shall include all savings realized from the downsizing of the State mental retardation centers including both the savings in direct State appropriations in the budgets of the State mental retardation centers as well as the savings in the State matching portion of reduced Medicaid payments associated with downsizing.

"(c) The Department of Health and Human Services shall report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The progress report shall be submitted not later than January 15, 2004, and a final report submitted not later than May 1, 2004.

"(d) Downsizing of mental retardation centers which occurs in the 2003-2004 fiscal year shall be maintained for the 2004-2005 fiscal year. Effective July 1, 2003, downsizing shall be accomplished in accordance with this section and the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. All savings resulting from downsizing occurring on and after July 1, 2003, shall be utilized as set forth in subsection (b) of this section."

Mental Retardation Center Transition Plan. — Session Laws 2001-424, ss. 21.62 (a) to (d), provide: "(a) In keeping with the United States Supreme Court Decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall develop and implement a plan for the transfer of residents of State mental retardation centers, if appropriate, as follows:

"(1) Transfer those residents of the centers that need institutional services to a private intermediate care facility for the mentally retarded.

"(2) Transition to community programs and services those residents of the center that may be appropriately served in the community.

"The Department shall develop a transition plan for moving each resident of the mental retardation center to the community-based services and supports, if appropriate. The transition plan shall be developed in consultation with the resident and the resident's family or guardian.

"(b) The Department may use funds from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to facilitate the transition of residents into alternative community-based services as required under subsection (a) of this section [s. 21.62 (a) of Session Laws 2001-424]. Nonrecurring savings realized from implementation of the plan required under subsection (a) of this section [s. 21.62 (a) of Session Laws 2001-424] shall be deposited to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with Section 21.58 of this ac [Session Laws 2001-424]. Recurring savings realized through implementation of this section [s. 21.62 of Session Laws 2001-424] shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (i) for implementation of subsection (a)(1) and (2) of this section [ss. 21.62 (a) (1) and (a) (2) of Session Laws 2001-424], and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

"(c) On or before January 1, 2002, and again on or before May 1, 2002, and May 1, 2003, the Department shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on its progress in implementing this section [s. 21.62 of Session Laws 2001-424].

"(d) Before closing one or more State mental retardation centers the Department shall report the closure to the Joint Legislative Commission on Governmental Operations."

Session Laws 2003-284, ss. 10.15(a) through (c), provide: "(a) The Department of Health and Human Services shall develop and implement a plan for the reorganization of outreach services performed by the State mental retardation centers. The plan shall provide for the elimination of self-referrals by the mental retardation centers and shall include the following:

"(1) The area and county mental health programs shall have exclusive authority for referring to the mental retardation centers persons in the community who are in need of specialized services.

"(2) The mental retardation centers shall coordinate the transition of residents from the mental retardation centers to area and county mental health programs, and shall provide technical assistance to community service providers and families who care for transitioned residents, and to others in the community, as appropriate, for the purpose of furthering community services and placement.

"(3) The method for allocating savings in State appropriations from the mental retardation centers across the area and county mental health programs.

"(b) In accordance with the plan established in subsection (a) of this section, any recurring and nonrecurring savings in State appropriations that result from the transfer of referral activities in the mental retardation centers to area and county mental health programs shall be transferred from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to area and county mental health programs for referral activities.

"(c) The Department of Health and Human Services shall report on the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. This report shall be submitted on February 1, 2004."

Dorothea Dix Hospital. — Session Laws 2001-424, ss. 21.63 (a) to (e), provide: "(a) In keeping with the United States Supreme Court decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall develop and implement a plan for the construction of a replacement facility for Dorothea Dix Hospital in accordance with subsection (d) of this section [s. 21.63(d) of Session Laws 2001-424], and for the transition of patients to the new facility, to the community, or to other long-term care facilities, as appropriate. The goal of the State Hospital Plan is to develop mechanisms and identify resources needed to enable current patients and their families to continue to receive the necessary services and supports based on the following guiding principles:

"(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

"(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

"(3) Individuals shall receive evidenced-based psychiatric services and care that are cost-efficient.

"(4) The State shall minimize cost shifting to other State and local facilities or institutions.

"(b) The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan for each patient in the hospital. The State shall ensure that transition plans for placement of and services to individuals who are patients of Dorothea Dix Hospital take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

"(c) In accordance with the plan established in subsections (a) and (b) of this section [ss. 21.63 (a) and (b) of Session Laws 2001-424], any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with Section 21.58 of this act [Session Laws 2001-424]. Recurring savings realized through implementation of this section [s. 21.63 of Session Laws 2001-424] shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (i) for implementation of subsections (a) and (b) of this section [ss. 21.63 (a) and (b) of Session Laws 2001-424], and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

"(d) The Secretary of the Department of Health and Human Services shall, in consultation with the Department of Administration, plan for the construction of a psychiatric hospital to replace Dorothea Dix Hospital and to provide acute psychiatric treatment services for citizens of the State. The Department shall identify alternative locations for the new hospital. The Department shall identify those alternative locations that maximize existing State funds, access by clients, and efficiencies in service and administration. In developing this plan, the Secretary, in consultation with the Department of State Treasurer and the Department of Administration, shall identify and recommend the most cost-effective means to finance construction of the new State hospital. The Department shall also take into consideration the findings and recommendations of the Government Performance Audit Committee (GPAC), December 1992, MGT America Report of 1998, and the Report of the Department of State Auditor, April 1, 2000. The Department of Health and Human Services shall provide a progress report on December 1, 2001, and a final report not later than April 1, 2002, to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

"(e) The Department of Health and Human Services shall submit reports on the status of implementation of this section [s. 21.63 of Session Laws 2001-424] to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. These reports shall be submitted on February 1, 2002, and May 1, 2002."

Support and Training for Long-Term Care Providers Caring for Residents With Mental Illnesses. — Session Laws 2004-144, ss. 1 through 4, provide: "SECTION 1. The Department of Health and Human Services shall study the mission of the Geriatric Mental Health Specialty Teams to assist long-term care facilities in serving all residents who are within the targeted populations, as identified in the State Plan developed pursuant to G.S. 122C-102. The Department shall include representatives from Area Authorities, Local Management Entities, the adult care home and the nursing home industries and other appropriate stakeholders. As part of this study, the Department shall consider whether to:

"(1) Create two separate teams, a Geriatric Mental Health Specialty Team to provide services to geriatric mental health residents who are part of the targeted population, and a LTC Mental Health Specialty Team to provide services to nongeriatric residents who are part of the targeted population in long-term care facilities.

"(2) Broaden the scope of and rename the Geriatric Mental Health Specialty Teams to LTC Mental Health Specialty Teams to reflect the expanded mission.

"SECTION 2. The Department of Health and Human Services shall also standardize these criteria across all mental health specialty teams:

"(1) Team purpose,

"(2) Eligibility for services,

"(3) Screening processes,

"(4) Referral processes, and

"(5) Forms, Training Manuals, Service Orders, and Authorizations.

"The Department shall proceed immediately with implementing any of these standards that are currently established. The Department shall provide a time line for implementation of the remaining criteria in its interim report required under Section 4 of this act.

"SECTION 3.The Department of Health and Human Services shall proceed immediately with implementation of the following:

"(1) Tracking expenditure data for each Team and each Area Program/Local Management Entity.

"(2) Tracking the number of facilities served, the number of clients served, and the types of services provided by each Team.

"(3) Tracking the use of clinicians with and without formal specialty training in mental health and geriatric mental health on the specialty teams.

"SECTION 4. The Department of Health and Human Services shall submit an interim report to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 30, 2004, on its efforts to standardize criteria; track expenditure data; and track the number of facilities served, clients served, and services provided by each Team. The Department shall submit a final report on its standardization and tracking efforts, and the results of its study, to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 30, 2005."

Study of Mental Health Services for Domestic Violence Victims. — Session Laws 2004-186, s. 6.1 provides: "The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

"The Department shall make a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than October 1, 2004, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before January 15, 2005."

County Medicaid Cost Share. — Session Laws 2005-276, s. 10.13(a), provides: "Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

Session Laws 2005-276, s. 10.13(b), provides: "Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

For similar prior provisions see Session Laws 2003-284, §§ 10.22(a) and (b).

Long-term Plan for Meeting Mental Health Developmental Disabilities, and Substance Abuse Services Needs — Session Laws 2005-276, s. 10.24(a)-(c), provides: "The Secretary of the Department of Health and Human Services shall, in consultation with interested advocacy groups and affected State and local agencies, develop a long-range plan for addressing the mental health, developmental disabilities, and substance abuse services needs of the State. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102 and shall address the following:

"(1) The service needed at the community level within each LME in order to ensure an adequate level of services to the average number of persons needing the services based on population projections.'

"(2) The full continuum of services needed for each disability group within an LME, including:

"a. Which services could be regional or multi-LME based;

"b. What percent of the population each LME would expect to use State-level facilities; and

"c. An inventory of existing services within each LME for each disability group, and the gaps that exist;

"(3) Projected growth in services for each disability group within each LME or region that can reasonably be managed over the ensuing five-year period; and

"(4) Projected start-up costs and the total funding needed in each year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to implement the long-range plan.

"Funds shall not be transferred from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services.

"(b) The Department shall use not less than fifty percent (50%) of moneys in the Trust Fund established pursuant to G.S. 143-15D for the 2005-2006 fiscal year for nonrecurring start-up funds for community-based services, including funding for existing area program services to transition to the private sector or to another public service agency. Moneys in the Trust Fund may be used to expand recurring community-based services only if sufficient recurring funds can be identified within the Department from funds currently budgeted for mental health, developmental disabilities, and substance abuse services, area mental health programs or county programs, or local government.

"(c) Not later than March 1, 2006, the Department of Health and Human Services shall report on the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

Transition Planning For State Psychiatric Hospitals — Session Laws 2005-276, ss. 10.28(a)-(d), provides: "(a) In keeping with the United States Supreme Court decision in *Olmstead vs. L.C. & E.W.* and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

"(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

"(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

"(3) Individuals shall receive evidence-based psychiatric services and care that are cost-efficient.

"(4) The State shall minimize cost shifting to other State and local facilities or institutions.

"(b) The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

"(c) In accordance with the plan established in subsections (a) and (b) of this section, any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with G.S. 143-15.3D. Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, (i) for implementation of subsections (a) and (b) of this section and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with *Olmstead vs. L.C. & E.W.*

"(d) The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committe on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2005 and May 1, 2006.

Mental Retardation Center Downsizing. — Session Laws 2005-276, s. 10.29(a), provides: "In accordance with the Department of Health and Human Services' plan for mental health, developmental disabilities, and substance abuse services system reform, the Department shall ensure that the downsizing of the State's regional mental retardation facilities is continuously based upon residents' needs and the availability of community-based services with a targeted goal of four percent (4%) each year. The Department shall implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The Department shall manage the client population of the mental retardation centers in order to ensure that placements for ICF-MR level of care shall be made in non-State facilities. Admissions to State ICF-MR facilities are permitted only as a last resort and only upon approval of the Department. The corresponding budgets for each of the State mental retardation centers shall be reduced, and positions shall be eliminated as the census of each facility decreases. At no time shall mental retardation center positions be transferred to other units within a facility or assigned nondirect care activities such as outreach."

Session Laws 2005-276, s. 10.29(b), provides: "The Department of Health and Human Services shall apply any savings in State appropriations in each year of the 2005-2007 fiscal biennium that result from reductions in beds or services as follows:

"(1) The Department shall place nonrecurring savings in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs and use the savings to facilitate the transition of clients into appropriate community-based services and support in accordance with G.S. 143-15.3D;

"(2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall retain recurring savings realized through implementation of this section to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W. In determining the savings in this section, savings shall include all savings realized from the downsizing of the State mental retardation centers, including the savings in direct State appropriations in the budgets of the State mental retardation centers; and

"(3) The Department of Health and Human Services, Division of Medical Assistance, shall transfer any recurring Medicaid savings resulting from the downsizing of State-operated MR centers from the ICF-MR line in Medicaid to the CAP-MR/DD line."

Session Laws 2005-276, s. 10.29(c), provides: "Consistent with the requirements of this section, the Secretary of Health and Human Services shall develop a plan to ensure that there are sufficient developmental disability/mental retardation regional centers to correspond with service catchment areas. The Plan shall address:

"(1) Methods of funding for community services necessitated by down-sizing;

"(2) How many State-operated beds and non-State operated beds are needed to serve the population; and

"(3) Alternative uses for facilities.

"Not later than April 1, 2006, the Department shall report on the development of the plan, and not later than April 1, 2007, shall report the final plan, including recommendations for legislative action, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division."

Session Laws 2005-276, s. 10.29(d), provides: "The Department of Health and Human Services shall report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The Department shall submit the progress report no later than January 15, 2006, and submit a final report no later than May 1, 2006."

For prior provisions, see Session Laws 2003-284, ss 10.14(a)-(d).

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Acts of 2001.'"

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5, is a severability clause.

For provisions of Session Laws 2001-437, ss. 3(a) to 3(d), relating to certification of area authorities and county programs to administer and deliver mental health, developmental disabilities, and substance abuse services, see note at G.S. 122C-10.

Session Laws 2003-284, ss. 10.12(a) through (d), effective July 1, 2003, provide: "(a) In keeping with the United States Supreme Court decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall develop and implement a plan for the construction of a replacement facility for Dorothea Dix Hospital and for the transition of patients to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

"(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

"(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

"(3) Individuals shall receive evidenced-based psychiatric services and care that are cost-efficient.

"(4) The State shall minimize cost shifting to other State and local facilities or institutions.

"(b) The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

"(c) In accordance with the plan established in subsections (a) and (b) of this section, any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with G.S. 143-15.3D. Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, (i) for implementation of subsections (a) and (b) of this section and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

"(d) The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2003, and May 1, 2004."

Session Laws 2003-284, ss. 10.22(a) and (b) provide: "(a) Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

"(b) Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010."

Session Laws 2003-284, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2003'."

Session Laws 2003-284, s. 49.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2003-2005 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2003-2005 fiscal biennium."

Session Laws 2003-284, s. 49.5 is a severability clause.

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides:

"Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Session Laws 2006-66, s. 10.28, provides: "Independent consultants hired by the Department from funds appropriated in this act for this purpose shall undertake the following tasks:

"(1) Assist DHHS with the strategic planning necessary to develop the revised State Plan as required under G.S. 122C-102. The State Plan shall be coordinated with local and regional crisis service plans by area authorities and county programs.

"(2) Study and make recommendations to increase the capacity of DHHS to implement system reform successfully and in a manner that maintains strong management functions by area authorities and county programs at the local level.

"(3) Assist the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to work with area authorities and county programs to:

"a. Develop and implement five to ten critical performance indicators to be used to hold area authorities and county programs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than six months after the consultant's contract is awarded and in no event later than July 1, 2007.

"b. Standardize the utilization management functions and functions related to person-centered plans.

"c. Implement other uniform procedures for the management functions of area authorities and county programs.

"(4) Provide technical assistance and oversight to private service providers, area authorities, and county programs to ensure that best practices and new services are being delivered with fidelity to the service definition model.

"(5) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of their administrative and management functions and the establishment and operation of community-based programs. The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.

"(6) Assist the Division with implementing standard forms, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. These processes and procedures shall include standardized denial codes and a standard policy regarding the coordination of benefits. The independent consultant shall consult with area authorities and county programs regarding the development of these forms, contracts, processes, and procedures. Any document or process developed under this subdivision shall place an obligation upon providers to transmit to area authorities and county programs timely client information and outcome data. The independent consultant shall also recommend language regarding what constitutes a clean claim for purposes of billing. When implementing this subdivision, the independent consultant shall balance the need for area authorities and county programs to exercise discretion in the discharge of their management responsibilities with the need of private service providers for a uniform system of doing business with public entities. The independent consultant shall also (i) identify other areas of standardization that may be implemented without undermining the authority of area authorities and county programs, and (ii) identify and eliminate processes and procedures that are duplicative or result in unnecessary paperwork."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2006-142, s. 2(b), provides: "The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before July 19, 2006 and produce a single document that contains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007.

"DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules."

Session Laws 2007-323, s. 10.49(u), provides: "In keeping with the United States Supreme Court decision in *Olmstead v. L.C. & E.W.* and

State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

"(1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.

"(2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.

"(3) Individuals shall receive evidence-based psychiatric services and care that are cost-efficient.

"(4) The State shall minimize cost shifting to other State and local facilities or institutions.

"The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

"The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2007, and May 1, 2008."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-574, s. 15.1, provides: "The Department of Health and Human Services, Division of Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while conducting the study."

Session Laws 2009-574, s. 15.2, provides: "The Department may report findings and recommendations on the feasibility of conducting drug tests for long-term care facility employment applicants and employees to the North Carolina Study Commission on Aging on or before October 1, 2010."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

§§ 122C-103 through 122C-110: Reserved for future codification purposes.

Part 2. State, County and Area Authority.

§ 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director or program director shall (i) manage the public mental health, developmental disabilities, and substance abuse system for the area authority or county program according to the local business plan, and (ii) enforce applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area and county program directors and State facility directors shall provide for the coordination of public services between area authorities, county programs, and State facilities. The area authority or county program shall monitor the provision of mental health, developmental disabilities, and substance abuse services for compliance with the law, which monitoring and management shall not supersede or duplicate the regulatory authority or functions of agencies of the Department. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2001-437, s. 1.6; 2002-164, s. 4.2; 2006-142, s. 4(b).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-112: Repealed by Session Laws 2001-437, s. 1.7(a), effective July 1, 2002.

§ 122C-112.1. Powers and duties of the Secretary.

(a) The Secretary shall do all of the following:

(1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.

(3) Establish a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services.

(4) Adopt rules specifying the content and format of LME business plans.

(5) Review LME business plans and, upon approval of the plan, certify the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area.

(6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards. The procedures shall include the development and use of critical performance measures and report cards for each area authority and county program.

(7) Conduct regularly scheduled monitoring and oversight of area authority, county programs, and all providers of public services. Monitoring and oversight shall be used to assess compliance with the LME business plan and implementation of core LME functions. Monitoring shall also include the examination of LME and provider performance on outcome measures including adherence to best practices, the assessment of consumer satisfaction, and the review of client rights complaints.

(8) Make findings and recommendations based on information and data collected pursuant to subdivision (7) of this subsection and submit these findings and recommendations to the applicable area authority board, county program director, board of county commissioners, providers of public services, and to the Local Consumer Advocacy Office.

(9) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of the LME functions and the establishment and operation of community-based programs. The technical assistance required under this subdivision includes, but is not limited to, the technical assistance required under G.S. 122C-115.4(d)(2). The Secretary shall include in the State Plan a mecha-

nism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.

(10) Operate State facilities and adopt rules pertaining to their operation.

(11) Develop a unified system of services provided at the community level, by State facilities, and by providers enrolled or under a contract with the State and an area authority or county program.

(12) Adopt rules governing the expenditure of all funds for mental health, developmental disabilities, and substance abuse programs and services.

(13) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2.

(14) Implement the uniform portal process developed under rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in accordance with G.S. 122C-114.

(15) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

(16) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252.

(17) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse.

(18) Administer and enforce rules that are conditions of participation for federal or State financial aid.

(19) Carry out G.S. 122C-361.

(20) Monitor the fiscal and administrative practices of area authorities and county programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by area authorities and county programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles.

(21) Provide technical assistance, including conflict resolution, to counties in the development and implementation of area authority and county program business plans and other matters, as requested by the county.

(22) Develop a methodology to be used for calculating county resources to reflect cash and in-kind contributions of the county.

(23) Adopt rules establishing program evaluation and management of mental health, developmental disabilities, and substance abuse services.

(24) Adopt rules regarding the requirements of the federal government for grants-in-aid for mental health, developmental disabilities, or substance abuse programs which may be made available to area authorities or county programs or the State. This section shall be liberally construed in order that the State and its citizens may benefit from the grants-in-aid.

(25) Adopt rules for determining minimally adequate services for purposes of G.S. 122C-124.1 and G.S. 122C-125.

(26) Establish a process for approving area authorities and county programs to provide services directly in accordance with G.S. 122C-141.

(27) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse.

(28) Enforce the protection of the rights of clients served by State facilities, area authorities, county programs, and providers of public services.

(29) Adopt rules for the enforcement of the protection of the rights of clients being served by State facilities, area authorities, county programs, and providers of public services.

(30) Prior to requesting approval to close a State facility under G.S. 122C-181(b):

a. Notify the Joint Legislative Commission on Governmental Operations, the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and members of the General Assembly who represent catchment areas affected by the closure; and

b. Present a plan for the closure to the members of the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Health and Human Services for their review, advice, and recommendations. The plan shall address specifically how patients will be cared for after closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the committees to which the plan is presented under this subdivision.

(31) Ensure that the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services is coordinated with the Medicaid State Plan and NC Health Choice.

(32) Implement standard forms, quality measures, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. The Secretary shall consult with LMEs, CFACs, counties, and qualified providers regarding the development of any forms, processes, and procedures required under this subdivision. Any document, process, or procedure developed under this subdivision shall place an obligation upon providers to transmit to LMEs timely client information and outcome data. The Secretary shall also adopt rules regarding what constitutes a clean claim for purposes of billing.

When implementing this subdivision, the Secretary shall balance the need for LMEs to exercise discretion in the discharge of their LME functions with the need of qualified providers for a uniform system of doing business with public entities.

(33) Develop and implement critical performance indicators to be used to hold LMEs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than July 1, 2007.

(34) Adopt rules for the implementation of a co-payment graduated schedule to be used by LMEs and by contractual provider agencies under G.S. 122C-146. The co-payment graduated schedule shall be developed to require a co-payment for services identified by the Secretary. Families whose family income is three hundred percent (300%) or greater of the federal poverty level are eligible for services with the applicable co-payment.

(35) Develop and adopt rules governing a statewide data system containing waiting list information obtained annually from each LME as

required under G.S. 122C-115.4(b)(8). The rules adopted shall establish standardized criteria to be used by LMEs to ensure that the waiting list data are consistent across LMEs. The Department shall use data collected from LMEs under G.S. 122C-115.4(b)(8) for statewide planning and needs projections. The creation of the statewide waiting list data system does not create an entitlement to services for individuals on the waiting list. The Department shall report annually to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services its recommendations based on data obtained annually from each LME. The report shall indicate the services that are most needed throughout the State, plans to address unmet needs, and any cost projections for providing needed services.

(36) The Department shall ensure that developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD are authorized on a quarterly, semiannual, or annual basis, in accordance with guidelines issued by the Department, unless a change in the individual's person-centered plan indicates a different authorization frequency.

(37) The Department shall develop new developmental disability service definitions for developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD that allow for person-centered and self-directed supports.

(b) The Secretary may do the following:

(1) Acquire, by purchase or otherwise in the name of the Department, equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs.

(2) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse; promote best practices.

(3) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description that shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office.

(4) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the Department of State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified.

(5) Enter into agreements authorized by G.S. 122C-346.

(6) Notwithstanding G.S. 126-18, authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181.

(7) Contract with one or more private providers or other public service agencies to serve clients of an area authority or county program and reallocate program funds to pay for services under the contract if the Secretary finds all of the following:

a. The area authority or county program refuses or has failed to provide the services to clients within its catchment area, or provide specialty services in another catchment area, in a manner that is at least adequate.

b. Clients within the area authority or county program catchment area will either not be served or will suffer an unreasonable hardship if required to obtain the services from another area authority or county program.

c. There is at least one private provider or public service agency within the area authority or county program catchment area, or within reasonable proximity to the catchment area, willing and able to provide services under contract.

Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and to the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.

(8) Contract with one or more private providers or other public service agencies to serve clients from more than one area authority or county program and reallocate the funds of the applicable programs to pay for services under the contract if the Secretary finds either that there is no other area authority or county program available to act as the administrative entity under contract with the provider or that the area authority or county program refuses or has failed to properly manage and administer the contract with the contract provider, and clients will either not be served or will suffer unreasonable hardship if services are not provided under the contract. Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.

(9) Require reports of client characteristics, staffing patterns, agency policies or activities, services, or specific financial data of the area authority, county program, and providers of public services. The reports shall not identify individual clients of the area authority or county program unless specifically required by State law or by federal law or regulation or unless valid consent for the release has been given by the client or legally responsible person. (2001-437, s. 1.7(b); 2006-142, s. 4(m); 2007-410, s. 2; 2007-504, s. 2.2; 2009-186, s. 2.)

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2006-142, s. 2, provides: "The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before July 19, 2006, and produce a single document that contains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007. DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules."

Session Laws 2007-323, s. 10.49(t), provides: "(t) Notwithstanding G.S. 122C-112.1(a)(30) and G.S. 122C-181, the Secretary of Health and Human Services may close Dorothea Dix Hospital, and the Secretary of Health and Human Services may close John Umstead Hospital or any unit or section of that hospital, provided that all of the following conditions have been met prior to closure of each hospital or unit thereof:

"(1) The Secretary has notified the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and members of the General Assembly who represent catchment areas affected by the closure.

"(2) The Secretary has presented a plan for the closure of each hospital or unit thereof to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Oversight Committee) for its review, advice, and recommendations. The Secretary shall also provide a copy of the plan to each member of the General Assembly in a timely manner to permit each member of the General Assembly to comment at the presentation of the plan to the Oversight Committee. The plan shall address specifically all of the following: (i) the capacity of any replacement facility and the catchment area to meet the needs of those consumers who require long-term secure services as well as acute care; (ii) an inventory of existing capacity in the communities within the catchment area for patients to access crisis services, appropriate housing, and other necessary supports; (iii) how the State and the LMEs in the catchment area will attract and retain qualified private providers that will provide services to State-paid non-Medicaid-eligible consumers; and (iv) the impact of the closure on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the Oversight Committee and other members of the General Assembly.

"(3) The Central Regional Hospital is operational and patient transfers from Dorothea Dix Hospital and John Umstead Hospital have been completed.

"(4) Notwithstanding any other provision of law, the Secretary shall not close a State facility if there are not adequate replacement services available prior to the date of closure."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-410, s. 3, provides: "The Secretary of the Department of Health and Human Services shall identify all services that are funded by or through the Department's budget and that do not require income-based criteria in order for an individual to be eligible to receive the service. The Secretary shall develop a proposal for implementing income-based criteria for eligibility for those programs and shall submit the proposal to the General Assembly and the Fiscal Research Division by November 1, 2007."

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

Session Laws 2008-107, s. 10.15(h), provides: "In order to temporarily address high admissions to adult acute unit beds in the State psychiatric hospitals, the Secretary of the Department of Health and Human Services may, notwithstanding G.S. 122C-181 and G.S. 122C-112.1(a)(30), open and operate on a temporary basis up to 60 beds at the Central Regional Hospital Wake Unit on the Dorothea Dix Campus and may maintain the Wake Unit on the Dix Campus until beds become available in the system. Section 10.49(t) of S.L. 2007-323 does not apply to this subsection."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-186, s. 2, effective July 1, 2009, added subdivisions (a)(35) through (a)(37).

CASE NOTES

Editor's Note. — The cases below were decided under former G.S. 122C-112.

The State, acting through the Secretary, was responsible for a young incompetent adult who, from birth, had been a ward of the State or of a guardian appointed by the State, and the Secretary at her election could provide required treatment of this individual through local authorities. Thomas S. v. Morrow, 781 F.2d 367 (4th Cir.), cert. denied, 476 U.S. 1124, 106 S. Ct. 1992, 90 L. Ed. 2d 673, 479 U.S. 869, 107 S. Ct. 235, 93 L. Ed. 2d 161 (1986), decided under former § 122-35.36.

§ 122C-113. Cooperation between Secretary and other agencies.

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, developmentally disabled, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, developmental disabilities, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education and the Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(c) The Secretary shall adopt rules to assure this coordination. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, s. 1; 1989, c. 625, s. 14; 1993, c. 522, s. 9; 1997-443, s. 11A.118(a); 1998-202, s. 4(s); 2000-137, s. 4(v).)

§ 122C-114. Powers and duties of the Commission.

(a) The Commission shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B-147.

(b) The Commission shall adopt rules regarding all of the following:

(1) The development of a process for screening, triage, and referral, including a uniform portal process, for implementation by the Secretary as required under G.S. 122C-112.1(14).

(2) LME monitoring and endorsement of providers of mental health, developmental disabilities, and substance abuse services.

(3) LME provision of technical assistance to providers of mental health, developmental disabilities, and substance abuse services.

(4) The requirements of a qualified public or private provider as that term is used in G.S. 122C-141. In adopting rules under this subsection, the Commission shall take into account the need to ensure fair competition among providers. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, s. 10; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2007-504, s. 2.3.)

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

Editor's Note. — Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

(a) A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program established pursuant to G.S. 122C-115.1. The catchment area of an area authority or a county program shall contain either a minimum population of at least 200,000 or a minimum of six counties. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control.

(a1) Effective July 1, 2007, the Department of Health and Human Services shall reduce by ten percent (10%) annually the administrative funding for LMEs that do not comply with the catchment area requirements of subsection (a) of this section. However, an LME that does not comply with the catchment area requirements because of a change in county membership shall have 12 months from the effective date of the change to comply with subsection (a) of this section.

(b) Counties shall and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Except as authorized in G.S. 122C-115.1, within a catchment area designated in the business plan pursuant to G.S. 122C-115.2, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

(d) Except as otherwise provided in this subsection, counties shall not reduce county appropriations and expenditures for current operations and ongoing programs and services of area authorities or county programs because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority or county program. Counties may reduce county appropriations by the amount previously appropriated by the county for one-time, nonrecurring special needs of the area authority or county program. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s.3; 1985, c. 589, s. 2; 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 749, s. 1; 1999-202, s. 1; 2001-437, s. 1.8; 2004-124, s. 10.26(a); 2006-66, s. 10.32(c), (d); 2007-504, s. 1.3.)

School-Based Child and Family Team Initiative. — Session Laws 2005-276, s. 6.24, provides for the development and implementation of a School-Based Child and Family Team Initiative. See note at G.S. 115C-105.20.

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

Session Laws 2008-107, s. 10.15(aa), provides: "The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that:

"(1) LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2008, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115, and

"(2) The Guilford Center for Behavioral Health and Disability Services, the Smoky Mountain Center, and the Mecklenburg County Area Mental Health, Developmental Disability and Substance Abuse Authority may continue with or implement the proposed administrative service organization under development as of March 1, 2008, for merger or consolidation of any combination of these entities."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 10.12(c), provides: "The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2010, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115. This subsection does not prohibit LMEs from voluntarily merging if they are contiguous or consolidating administrative functions."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Counties Not Exempted from Mandates of Chapter 122C. — This section and G.S. 153A-77(a) do not exempt any county from the service delivery mandates of Chapter 122C because the latter provision, allowing Boards of Commissioners of counties with populations greater than 425,000 to assume direct control over boards of health, social services, and mental health, developmental disabilities, and substance abuse services, only pertains to the governing structure of a county program and not to the provision of services. See opinion of Attorney General to Eddie S. Winstead III, Esq., Harrington, Ward, Gilleland & Winstead, L.L.P., 2002 N.C.A.G. 24 (9/6/02).

§ 122C-115.1. County governance and operation of mental health, developmental disabilities, and substance abuse services program.

(a) A county may operate a county program for mental health, developmental disabilities, and substance abuse services as a single county or, pursuant to Article 20 of Chapter 160A of the General Statutes, may enter into an interlocal agreement with one or more other counties for the operation of a multicounty program. An interlocal agreement shall provide for the following:

(1) Adoption and administration of the program budget in accordance with Chapter 159 of the General Statutes.

(2) Appointment of a program director to carry out the provisions of G.S. 122C-111 and duties and responsibilities delegated by the county. Except when specifically waived by the Secretary, the program director shall meet all the following minimum qualifications:
  a. Masters degree.
  b. Related experience.
  c. Management experience.
  d. Any other qualifications required under G.S. 122C-120.1.

(3) Repealed by Session Laws 2006-66, s. 10.32(e), effective July 1, 2007.

(4) Compliance with the provisions of this Chapter and the rules of the Commission and the Secretary.

(5) Written notification to the Secretary prior to the termination of the interlocal agreement.

(6) Appointment of an advisory committee. The interlocal agreement shall designate a county manager to whom the advisory committee shall report. The interlocal agreement shall also designate the appointing authorities. The appointing authorities shall make appointments that take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements provided in G.S. 122C-118.1.

(b) Before establishing a county program pursuant to this section, a county board of commissioners shall hold a public hearing with notice published at least 10 days before the hearing.

(c) A county shall ensure that the county program and the services provided through the county program comply with the provisions of this Chapter and the rules adopted by the Commission and the Secretary.

(d) A county program shall submit on a quarterly basis to the Secretary and the board of county commissioners service delivery reports that assess the quality and availability of public services within the county program's catchment area. The service delivery reports shall include the types of services delivered, number of recipients served, and services requested but not delivered due to staffing, financial, or other constraints. In addition, at least annually, a progress report shall be submitted to the Secretary and the board of county commissioners. The progress report shall include an assessment of the progress in implementing local service plans, goals, and outcomes. All reports shall be in a format and shall contain any additional information required by the Secretary or board of county commissioners.

(e) Within 30 days of the end of each quarter of the fiscal year, the program director and finance officer of the county program shall present to each member of the board of county commissioners a budgetary statement and balance sheet that details the assets, liabilities, and fund balance of the county program. This information shall be read into the minutes of the meeting at which it is presented. The program director or finance officer of the county program shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners.

(f) In a single-county program, the program director shall be appointed by the county manager. In a multicounty program, the program director shall be appointed in accordance with the terms of the interlocal agreement.

Except when specifically waived by the Secretary, the program director in a single county program shall meet all the following minimum qualifications:

(1) Masters degree.
(2) Related experience.
(3) Management experience.
(4) Any other qualifications required under G.S. 122C-120.1.

(g) In a single-county program, an advisory committee shall be appointed by the board of county commissioners and shall report to the county manager. The appointments shall take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements in G.S. 122C-118.1. In a multicounty program, the advisory committee shall be appointed in accordance with the terms of the interlocal agreement.

(h) The county program may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(i) Except as otherwise specifically provided, this Chapter applies to counties that provide mental health, developmental disabilities, and substance abuse services through a county program. As used in the applicable sections of this Article, the terms "area authority", "area program", and "area facility" shall be construed to include "county program". The following sections of this Article do not apply to county programs:

(1) G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.
(2) G.S. 122C-119 and G.S. 122C-119.1.
(3) G.S. 122C-120 and G.S. 122C-121.
(4) G.S. 122C-127.
(5) G.S. 122C-147.
(6) G.S. 122C-152 and G.S. 122C-153.
(7) G.S. 122C-156.
(8) G.S. 122C-158. (2001-437, s. 1.9; 2006-66, s. 10.32(e); 2006-142, s. 4(f), (g), (i), (j).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

For provisions of Session Laws 2001-437, ss. 3(a) to 3(d), relating to certification of area authorities and county programs to administer and deliver mental health, developmental disabilities, and substance abuse services, see note at G.S. 122C-10.

Session Laws 2006-66, s. 1.2, provides: "This act shall beknown as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6 is a severability clause.

Effect of Amendments. — Session Laws 2006-66, s. 10.32(e), effective July 1, 2007, repealed subdivision (a)(3).

Session Laws 2006-142, s. 4(f), (g), effective July 19, 2006, in subdivision (a)(6) and subsection (g), substituted "The membership" for "At least fifty percent (50%) of the membership," and substituted "G.S. 122C-118.1" for "G.S. 122C-118.1(b)(1)-(4)."

Session Laws 2006-142, s. 4(i), (j), effective January 1, 2007, in subdivision (a)(2), inserted "all" following "director shall meet," added subdivision (a)(2)d, and made minor stylistic changes; and added the second paragraph in subsection (f).

§ 122C-115.2. LME business plan required; content, process, certification.

(a) Every county, through an area authority or county program, shall provide for the development, review, and approval of an LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. An LME business plan shall provide detailed information regarding how the area authority or county program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The business plan shall be in effect for at least three State fiscal years. The Secretary shall develop a model business plan that illustrates compliance with this section, including specific State standards and rules adopted by the Secretary. The Secretary shall provide each LME with the model business plan to assist the LME in developing its business plan.

(b) Business plans shall include the following:

(1) Description of how the following core administrative functions will be carried out:
  a. Planning. — Local services plans that identify service gaps and methods for filling the gaps, ensure the availability of an array of services based on consumer needs, provision of core services, equitable service delivery among member counties, and prescribing the efficient and effective use of all funds for targeted services. Local planning shall be an open process involving key stakeholders.
  b. Provider network development. — Ensuring available, qualified providers to deliver services based on the business plan. Development of new providers and monitoring provider performance and service outcomes. Provider network development shall address consumer choice and fair competition. For the purposes of this section, a "qualified provider" means a provider who meets the provider qualifications as defined by rules adopted by the Secretary.
  c. Service management. — Implementation of uniform portal process. Service management shall include appropriate level and intensity of services, management of State hospitals/facilities bed days, utilization management, case management, and quality management. If services are provided directly by the area authority or county program, then the plan shall indicate how consumer choice and fair competition in the marketplace is ensured.
  d. Financial management and accountability. — Carrying out business functions in an efficient and effective manner, cost-sharing, and managing resources dedicated to the public system.
  e. Service monitoring and oversight. — Ensuring that services provided to consumers and families meet State outcome standards and ensure quality performance by providers in the network.
  f. Evaluation. — Self-evaluation based on statewide outcome standards and participation in independent evaluation studies.
  g. Collaboration. — Collaborating with other local service systems in ensuring access and coordination of services at the local level. Collaborating with other area authorities and county programs and the State in planning and ensuring the delivery of services.
  h. Access. — Ensuring access to core and targeted services.

(2) Description of how the following will be addressed:
  a. Reasonable administrative costs based on uniform State criteria for calculating administrative costs and costs or savings anticipated from consolidation.
  b. Proposed reinvestment of savings toward direct services.
  c. Compliance with the catchment area consolidation plan adopted by the Secretary.
  d. Based on rules adopted by the Secretary, method for calculating county resources to reflect cash and in-kind contributions of the county.

e. Financial and services accountability and oversight in accordance with State and federal law.
f. The composition, appointments, selection process, and the process for notifying each board of county commissioners of all appointments made to the area authority board.
g. The population base of the catchment area to be served.
h. Use of local funds for the alteration, improvement, and rehabilitation of real property as authorized by and in accordance with G.S. 122C-147.
i. The resources available and needed within the catchment area to prevent out-of-community placements and shall include input from the community public agencies.

(3) Other matters determined by the Secretary to be necessary to effectively and efficiently ensure the provision of mental health, developmental disabilities, and substance abuse services through an area authority or county program.

(c) The county program or area authority proposing the business plan shall submit the proposed plan as approved by the board of county commissioners to the Secretary for review and certification. The Secretary shall review the business plan within 30 days of receipt of the plan. If the business plan meets all of the requirements of State law and standards adopted by the Secretary, then the Secretary shall certify the area authority or county program as a single-county area authority, a single-county program, a multicounty area authority, or a multicounty program. A business plan that demonstrates substantial compliance with the model business plan developed by the Secretary shall be deemed as meeting the requirements of State law and standards adopted by the Secretary. Implementation of the certified plan shall begin within 30 days of certification. If the Secretary determines that changes to the plan are necessary, then the Secretary shall so notify the submitting county program or area authority and the applicable participating boards of county commissioners and shall indicate in the notification the changes that need to be made in order for the proposed program to be certified. If the Secretary determines that a business plan needs substantial changes in order to be certifiable, the Secretary shall provide the LME submitting the plan with detailed information on each area of the plan that is in need of change, the particular State law or standard adopted by the Secretary that has not been met, and instructions or assistance on what changes need to be made in order for the plan to be certifiable. The submitting county program or area authority shall have 30 days from receipt of the Secretary's notice to make the requested changes and resubmit the amended plan to the Secretary for review. The Secretary shall provide whatever assistance is necessary to resolve outstanding issues. Amendments to the business plan shall be subject to the approval of the participating boards of county commissioners.

(d) Annually, in accordance with procedures established by the Secretary, each area authority and county program submitting a business plan shall enter into a memorandum of agreement with the Secretary for the purpose of ensuring that State funds are used in accordance with priorities expressed in the business plan. (2001-437, s. 1.9; 2002-164, s. 4.3; 2006-142, s. 4(c); 2007-504, s. 2.1.)

Expedited Review of Requests for Waivers from Rules Pertaining to Mental Health, Developmental Disabilities, and Substance Abuse Services. — Session Laws 2002-160, s. 7(a)-(c), effective October 17, 2002, and expiring July 1, 2005, provides: "(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and

G.S. 122C-114 as provided in this section.

"(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

"(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by October 1, 2002 and annually thereafter."

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

For provisions of Session Laws 2001-437, ss. 3(a) to 3(d), relating to certification of area authorities and county programs to administer and deliver mental health, developmental disabilities, and substance abuse services, see note at G.S. 122C-10.

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

§ 122C-115.3. Dissolution of area authority.

(a) Whenever the board of commissioners of each county constituting an area authority determines that the area authority is not operating in the best interests of consumers, it may direct that the area authority be dissolved. In addition, whenever a board of commissioners of a county that is a member of an area authority determines that the area authority is not operating in the best interests of consumers of that county, it may withdraw from the area authority. Dissolution of an area authority or withdrawal from the area authority by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a) of this section, no county shall withdraw from an area authority nor shall an area authority be dissolved without first demonstrating that continuity of services will be assured and without prior approval of the Secretary.

(c) Prior to withdrawal of a county from an area authority, the county board of commissioners shall hold a public hearing with notice published at least 10 days before the hearing.

(d) Prior to dissolution of an area authority, the area authority shall hold a public hearing with notice published in every participating county at least 10 days before the hearing.

(e) Any budgetary surplus available to an area authority at the time of its dissolution shall be distributed to those counties comprising the area authority on the same pro rata basis that the counties appropriated and contributed funds to the area authority's budget during the current fiscal year. Distribution to the counties shall be determined on the basis of an audit of the financial record of the area authority. The area authority board shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described in this subsection shall apply when one or more counties of an area authority withdraw from the area authority.

(f) Funds distributed to counties pursuant to subsection (e) of this section shall be placed in the fund balance of the county program or area authority subsequently established or joined pursuant to G.S. 122C-115.

(g) Any liabilities at the time of its dissolution shall be paid from unobligated surplus funds available to the area authority. If unobligated surplus funds are not sufficient to satisfy the total indebtedness of the area authority, then the remaining unsatisfied indebtedness shall be apportioned on the same pro rata basis that the counties appropriated and contributed funds to the area authority's budget during the current fiscal year. (2001-437, s. 1.9.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-115.4. Functions of local management entities.

(a) Local management entities are responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance abuse services at the community level. An LME shall plan, develop, implement, and monitor services within a specified geographic area to ensure expected outcomes for consumers within available resources.

(b) The primary functions of an LME are designated in this subsection and shall not be conducted by any other entity unless an LME voluntarily enters into a contract with that entity under subsection (c) of this section. The primary functions include all of the following:

(1) Access for all citizens to the core services and administrative functions described in G.S. 122C-2. In particular, this shall include the implementation of a 24-hour a day, seven-day a week screening, triage, and referral process and a uniform portal of entry into care.

(2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's endorsement if a provider fails to do any of the following:

  a. Meet defined quality criteria.

  b. Adequately document the provision of services.

  c. Provide required staff training.

  d. Provide required data to the LME.

  e. Allow the LME access in accordance with rules established under G.S. 143B-139.1.

  f. Allow the LME access in the event of an emergency or in response to a complaint related to the health or safety of a client.

  If at anytime the LME has reasonable cause to believe a violation of licensure rules has occurred, the LME shall make a referral to the Division of Health Service Regulation. If at anytime the LME has reasonable cause to believe the abuse, neglect, or exploitation of a client has occurred, the LME shall make a referral to the local Department of Social Services, Child Protective Services Program, or Adult Protective Services Program.

(3) Utilization management, utilization review, and determination of the appropriate level and intensity of services. An LME may participate in the development of person centered plans for any consumer and shall monitor the implementation of person centered plans. An LME shall review and approve person centered plans for consumers who receive State-funded services and shall conduct concurrent reviews of person centered plans for consumers in the LME's catchment area who receive Medicaid funded services.

(4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.

(5) Care coordination and quality management. This function involves individual client care decisions at critical treatment junctures to assure clients' care is coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results. Care coordination is sometimes referred to as "care management." Care coordination shall be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:

a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
b. Addressing difficult situations for clients or providers.
c. Consulting with providers regarding difficult or unusual care situations.
d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
e. Coordinating client transitions from one service to another.
f. Conducting customer service interventions.
g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
h. Interfacing with utilization reviewers and case managers.
i. Providing leadership on the development and use of communication protocols.
j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.

(6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.

(7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

(8) Each LME shall develop a waiting list of persons with intellectual or developmental disabilities that are waiting for specific services. The LME shall develop the list in accordance with rules adopted by the

Secretary to ensure that waiting list data are collected consistently across LMEs. Each LME shall report this data annually to the Department. The data collected should include numbers of persons who are:

a. Waiting for residential services.
b. Potentially eligible for CAP-MRDD.
c. In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions.

(c) Subject to subsection (b) of this section and all applicable State and federal laws and rules established by the Secretary, an LME may contract with a public or private entity for the implementation of LME functions designated under subsection (b) of this section.

(d) Except as provided in G.S. 122C-124.1 and G.S. 122C-125, the Secretary may neither remove from an LME nor designate another entity as eligible to implement any function enumerated under subsection (b) of this section unless all of the following applies:

(1) The LME fails during the previous consecutive three months to achieve a satisfactory outcome on any of the critical performance measures developed by the Secretary under G.S. 122C-112.1(33).
(2) The Secretary provides focused technical assistance to the LME in the implementation of the function. The assistance shall continue for at least three months or until the LME achieves a satisfactory outcome on the performance measure, whichever occurs first.
(3) If, after three months of receiving technical assistance from the Secretary, the LME still fails to achieve or maintain a satisfactory outcome on the critical performance measure, the Secretary shall enter into a contract with another LME or agency to implement the function on behalf of the LME from which the function has been removed.

(e) Notwithstanding subsection (d) of this section, in the case of serious financial mismanagement or serious regulatory noncompliance, the Secretary may temporarily remove an LME function after consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(f) The Commission shall adopt rules regarding the following matters:

(1) The definition of a high risk consumer. Until such time as the Commission adopts a rule under this subdivision, a high risk consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous 12 months.
(2) The definition of a high cost consumer. Until such time as the Commission adopts a rule under this subdivision, a high cost consumer means a person whose treatment plan is expected to incur costs in the top twenty percent (20%) of expenditures for all consumers in a disability group.
(3) The notice and procedural requirements for removing one or more LME functions under subsection (d) of this section. (2006-142, s. 4(d); 2007-323, ss. 10.49(*l*), (hh); 2007-484, ss. 18, 43.7(a)-(c); 2007-504, s. 1.2; 2008-107, s. 10.15(cc); 2009-186, s. 1; 2009-189, s. 1.)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), as amended by Session Laws 2009-526, s. 2(c) and Session Laws 2009-550, s. 1.1(c), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, 'file or filing' means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, take testimony and receive evidence by telephone or other electronic means. The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed the Department shall include a copy of the recording of the hearing as part of the official record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 180 days from the date of the filing of the petition.

This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 180 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Session Laws 2008-107, s. 10.15A(j), provides: "The Department of Health and Human Services, Division of Medical Assistance, shall adopt a policy reducing the maximum allowable hours for community support services to eight hours per week. This subsection does not apply to community support services offered under a Medicaid managed care, capitated at-risk waiver."

Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

Session Laws 2006-66, s. 10.32(b), as amended by Session Laws 2006-221, s. 12, provides: "The Secretary shall review and revise the LME systems management cost model to provide adequate funds for LMEs to fully implement the functions outlined in G.S 122C-115.4(b) as enacted in Section 4 of this act. The Secretary shall consult with the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services priorto implementing a revised cost model.

"For the 2006-2007 fiscal year and until the revised cost model is implemented, the Department shall maintain the 2005-2006 level of funding to LMEs for all LME functions except the following:

"(1) Up to thirteen million three hundred thirty-three thousand four hundred eighty-one dollars ($13,333,481) for utilization review; and

"(2) Up to twelve million one hundred fifty-six thousand forty-two dollars ($12,156,042) for claims processing.

"Any savings of State appropriations realized from the revised cost model shall be reallocated to State-funded services for mental health, developmental disabilities, and substance abuse services.

"Funds withdrawn for LME administrative functions shall be reallocated to other LMEs to be used to provide mental health, developmental disabilities, and substance abuse services. The ten percent (10%) reduction authorized under G.S. 122C-155(a1), as enacted by this section, is in addition to funding limitations of this subsection."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Editor's Note. — Session Laws 2007-323, s. 10.49(ee), as amended by Session Laws 2008-107, s. 10.15A(i) and (k), and as amended by Session Laws 2008-118, s. 3.11, provides: "This subsection does not apply to community support services offered under a Medicaid managed care, capitated, at-risk waiver. For all other community support services, for the purpose of avoiding overutilization of community support services and overexpenditure of funds for these services, the Department of Health and Human Services shall immediately conduct an in-depth evaluation of the use and cost of community support services to identify existing and potential areas of overutilization and overexpenditure. The Department shall also adopt or revise as necessary management policies and practices that will ensure that at a minimum:

"(1) There is in place a list of community support services that are appropriate to meet the critical needs of the client and are cost effective;

"(2) Community support services are appropriately utilized based on the critical needs of the client, and utilization is monitored routinely to ensure against overutilization;

"(3) That expenditures for services are controlled to the maximum extent possible without unnecessarily impairing service quality and efficiency;

"(4) Service providers are fully competent to provide each service, to provide the service in the most efficient manner, and that services and providers meet standards of protocol adopted by the Department. To this end, endorsement shall be based on compliance with: a Medicaid service-specific checklist, rules for Mental Health, Developmental Disabilities, and Substance Abuse Services, client rights rules in community Mental Health, Developmental Disabilities, and Substance Abuse Services, the Medicaid service records manual, and other Medicaid requirements as stipulated in the participation agreement with the Division of Medical Assistance. In accordance with G.S. 122C-115.4, an LME may remove a provider's endorsement;

"(5) All community support services are subject to prior approval.

"(6) If additional hours are authorized, the LME may participate in the development of the person-centered plan as part of its care coordination and quality management function as defined in G.S. 122C-115.4. Sixty days after the tiered rates required under subsection (b) of this section have been implemented by the Department, thirty-five percent (35%) of community support services must be delivered by qualified professionals. Six months thereafter fifty percent (50%) of community support services must be delivered by qualified professionals.

"(7) Based on standards of care and practice, a stringent clinical review process for authorization of services is implemented uniformly and in accordance with State guidelines;

"(8) Additional record audits of providers are conducted on a routine basis to continually ensure compliance with Medicaid requirements;

"(9) Post-payment clinical reviews are conducted at the local level to ensure that consumers receive the appropriate level and intensity of care;

"(10) Beginning October 1, 2007, and monthly thereafter, report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall include the following:

"a. The number of consumers of community support services by month, segregated by adult and child;

"b. The number of units of community support services billed and paid by month, segregated by adult and child;

"c. The amount paid for community support by month, segregated by adult and child;

"d. Of the numbers provided in sub-subdivision b. of this subdivision, identify those units provided by a qualified professional and those provided by a paraprofessional;

"e. The length of stay in community support, segregated by adult and child;

"f. The number of clinical post payment reviews conducted by LMEs and a summary of those findings;

"g. The total number of community support providers and the number of newly enrolled, re-enrolled, or terminated providers, and if available, reasons for termination;

"h. The number of community support providers that have been referred to DMA's Program Integrity Section, the Division's "Rapid Action response" committee; or the Attorney General's Office;

"i. The utilization of other, newly enhanced mental health services, including the number of consumers served by month, the number of hours billed and paid by month, and the amount expended by month;

"(11) If possible, modify the Medicaid claims payment processing system so that providers will be required to identify, by claim, whether the service was provided by a qualified professional or a paraprofessional; and

"(12) The Department of Health and Human Services and the Department of Public Instruction shall amend their Memorandum of Agreement to ensure that each local education agency develops its own list of approved providers and individual service providers authorized to provide services on campus as provided under the Federal Safe Schools Act.

"The Department shall report not later than November 1, 2007, on the list of community support services determined to be appropriate. Not later than March 1, 2008, the Department shall provide a detailed report on the implementation and status of each of the activities required by this subsection to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall also include clear standards for determining local management entity capability to perform utilization review and utilization management and clear statewide standards for utilization review and utilization management. These standards shall include (i) determination of medical necessity; (ii) an authorization process that includes the use of standardized forms; (iii) concurrent review procedures; (iv) recipient appeals process; (v) minimum staffing requirements; (vi) requirements for data collection and reporting; and (vi) performance criteria for the LMEs and outside vendor.

"In order to ensure full compliance with the laws of this State on the implementation of mental health reform, the Department shall, by January 1, 2008, adopt statewide standardized authorization procedures and processes for Medicaid utilization review. Before July 1, 2008, (i) up to six LMEs that meet those standards (not including LMEs approved for 1915(b) waivers) may, under contract with the outside vendor, complete the utilization review process for enhanced benefit and CAP MR/DD services for the LMEs' respective catchment areas; (ii) the Department shall have a process outlined that would enable all other LMEs to meet the standards required for completing the utilization review process under contract with the outside vendor; (iii) the Department shall report on the implementation of utilization review, including the utilization review process, subcontract details, and funding levels, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The Department shall ensure that all Medicaid utilization review contracts with outside vendors, as required under this subsection, that are executed, renewed, or extended after the effective date of this act, are in compliance with and do not impair, interfere with, or otherwise prohibit the implementation of this subsection. Prior to renewing, extending, or entering into a contract with an outside vendor for utilization review under this subsection, the Department shall consult with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2007-484, s. 43.7(a), repealed amendments to G.S. 112C-115.4(b)(5) provided that House Bill 627, 2007 Regular Session [2007-504] becomes law. Amendments to G.S. 112C-115.4(b)(5) by Session Laws 2007-504, s. 1.2, and Session Laws 2007-323, s. 10.49(*l*), as amended by 2007-484, s. 43.7(b), are identical.

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental

Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

Session Laws 2008-107, s. 10.15A(b), provides: "In order to ensure accountability for services provided and funds expended for community services, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a tiered rate structure to replace the blended rate currently used for community support services. Under the new tiered structure, services that are necessary but do not require the skill, education, or knowledge of a qualified professional should not be paid at the same rate as services provided by qualified skilled professionals. The Department shall not implement the tiered rate structure until 15 days after it has notified the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The Department shall report on the development of the structure to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than October 1, 2008."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15(cc), effective July 1, 2008, inserted "consecutive" in subdivision (d)(1); and substituted "three" for "six" in subdivisions (d)(3) and (d)(4).

Session Laws 2009-186, s. 1, effective July 1, 2009, added subdivision (b)(8).

Session Laws 2009-189, s. 1, effective June 26, 2009, rewrote subdivision (b)(2).

§ 122C-116. Status of area authority; status of consolidated human services agency.

(a) An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

(b) A consolidated human services agency is a department of the county. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 2; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 10.)

Editor's Note. — Session Laws 1997-7, s. 1, provides that the Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

CASE NOTES

Cited in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772, 1999 N.C. App. LEXIS 899 (1999).

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall do all of the following:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services.

(2) Ensure the provision of services to clients in the catchment area, including clients committed to the custody of the Department of Juvenile Justice and Delinquency Prevention.

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities.

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary. The area authority shall submit the approved budget to the board of county commissioners and the county manager and provide quarterly reports on the financial status of the program in accordance with subsection (c) of this section.

(5) Assure that the services provided by the county through the area authority meet the rules of the Commission and Secretary.

(6) Comply with federal requirements as a condition of receipt of federal grants.

(7) Appoint an area director in accordance with G.S. 122C-121(d). The appointment is subject to the approval of the board of county commissioners except that one or more boards of county commissioners may waive its authority to approve the appointment. The appointment shall be based on a selection by a search committee of the area authority board. The search committee shall include consumer board members, a county manager, and one or more county commissioners. The Secretary shall have the option to appoint one member to the search committee.

(8) Develop and submit to the board of county commissioners for approval the business plan required under G.S. 122C-115.2. A multicounty area authority shall submit the business plan to each participating board of county commissioners for its approval. The boards of county commissioners of a multicounty area authority shall jointly submit one approved business plan to the Secretary for approval and certification.

(9) Perform public relations and community advocacy functions.

(10) Recommend to the board of county commissioners the creation of local program services.

(11) Submit to the Secretary and the board of county commissioners service delivery reports, on a quarterly basis, that assess the quality and availability of public services within the area authority's catchment area. The service delivery reports shall include the types of services delivered, number of recipients served, and services requested but not delivered due to staffing, financial, or other constraints. In addition, at least annually, a progress report shall be submitted to the Secretary and the board of county commissioners. The progress report shall include an assessment of the progress in implementing local service plans, goals, and outcomes. All reports shall be in a format and shall contain any additional information required by the Secretary or board of county commissioners.

(12) Comply with this Article and rules adopted by the Secretary for the development and submission of and compliance with the area authority business plan.

(13) Coordinate with Treatment Accountability for Safer Communities for the provision of services to criminal justice clients.

(14) Maintain a 24-hour a day, seven day a week crisis response service. Crisis response shall include telephone and face-to-face capabilities. Crisis phone response shall include triage and referral to appropriate face-to-face crisis providers and shall be initiated within one hour of notification. Crisis services do not require prior authorization but shall be delivered in compliance with appropriate policies and procedures. Crisis services shall be designed for prevention, intervention, and resolution, not merely triage and transfer, and shall be provided in the least restrictive setting possible, consistent with individual and family need and community safety.

(15) An LME that utilizes single stream funding shall, on a biannual basis, report on the allocation of service dollars and allow for public comment at a regularly scheduled LME board of directors meeting.

(16) Before an LME proposes to reduce State funding to HUD group homes and HUD apartments below the original appropriation of State funds, the LME must:

a. Receive approval of the reduction in funding from the Department, and

b. Hold a public hearing at an open LME board meeting to receive comment on the reduction in funding.

(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board.

(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide the quarterly report of the area authority to the county finance officer. The county finance officer shall provide the quarterly report to the board of county commissioners at the next regularly scheduled meeting of the board. The clerk of the board of commissioners shall notify the area director and the county finance officer if the quarterly report required by this subsection has not been submitted within the required period of time. This information shall be presented in a format prescribed by the county. At least twice a year, this information shall be presented in person and shall be read into the minutes of the meeting at which it is presented. In addition, the area director or finance officer of the area authority shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners.

(d) A multicounty area authority shall provide to each board of county commissioners of participating counties a copy of the area authority's annual audit. The audit findings shall be presented in a format prescribed by the county and shall be read into the minutes of the meeting at which the audit findings are presented. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d); 1989, c. 625, s. 14; 1991, c. 215, s. 1; 1995 (Reg. Sess., 1996), c. 749, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(t); 2000-137, s. 4(w).; 2001-437, s. 1.10; 2001-487, s. 79.5; 2005-371, s. 2; 2006-142, s. 3(a); 2009-191, s. 1.)

Cross References. — As to quarterly reports by mental health, developmental disabilities, and substance abuse services area authority or county program, see § 153A-453.

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2005-371, s. 1, provides: "The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop a central listing of mental health facilities designated for the placement of individuals to be involuntarily committed to assist law enforcement officers and others. The list shall be developed from existing funds appropriated to the Department. The listing shall be accessible on the Internet and implemented not later than October 1, 2005. The Department shall report on the implementation of the listing and the status and compliance of area authorities' crisis response service to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services not later than March 1, 2006."

Session Laws 2006-66, s. 10.26(a) through (f), as amended by Session Laws 2006-221, s. 11, and as amended by Session Laws 2007-323, s. 10.49(n), provides: "(a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five million two hundred fifty thousand dollars ($5,250,000) for the 2006-2007 fiscal year shall be allocated on a per capita basis and shall be used by area authorities and county programs for operational start-up, capital, or subsidies related to the development and implementation of a plan for a continuum of regional crisis facilities and local crisis services ('crisis plan'). Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this section. As used in this section, the term 'crisis' includes services for individuals with mental illnesses, developmental disabilities, and substance abuse addictions.

"(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars ($225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more personal services contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection.

"(c) No later than August 15, 2006, the Secretary shall designate between 15 and 25 appropriate groupings of LMEs for the development of regional crisis facilities. As used in this section, the term 'regional crisis facility' means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME, but that provides adequate access to a facility by all consumers in the State. The Secretary shall consult with LMEs in determining the regional groupings. The Secretary shall also take into consideration geographical factors, prior LME groupings and partnerships, and existing community facilities.

(d) With the assistance of the consultant, the LMEs within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis stabilization units, 23-hour beds, facility-based crisis, inpatient crisis, detox, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

"If all LMEs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall first attempt to secure those services through a community hospital or other community facility. If all LMEs in the crisis region determine the region's crisis needs are being met, the LMEs may use the funds to meet local crisis service needs.

"(e) Each LME shall submit its crisis services plan to the Secretary for review no later than March 1, 2007. The plan shall take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated under this section. The Secretary shall review each plan to determine whether it meets all the requirements of this section. If the Secretary approves the plan, the LME shall receive implementation funding."

"(f) LMEs shall report monthly to the Department and to the consultant regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and any remaining gaps in local and regional crisis services. The consultant and the Department shall report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal

Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each LME's proposed and actual use of the funds appropriated under this section. The reporting requirements under this subsection shall expire July 1, 2008."

The Department may allocate up to three percent (3%) of the funds appropriated under subsection (a) of this section to LMEs to assist them with the cost of developing their crisis services plans.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-323, s. 10.49(o), provides: "LMEs shall report monthly to the Department and to the consultant regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and any remaining gaps in local and regional crisis services. The consultant and the Department shall report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each LME's proposed and actual use of the funds appropriated under this section. The reporting requirements under this subsection shall expire July 1, 2008."

Session Laws 2007-323, s. 10.49(r)-(s5), provide: "(r) The Department of Health and Human Services shall develop a system for reporting to LMEs aggregate information regarding all visits to community hospital emergency departments due to a mental illness, a developmental disability, or a substance abuse disorder. The report shall be submitted on a quarterly basis beginning with the 2007-2008 fiscal year.

"(s1) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division), the sum of two million five hundred thousand dollars ($2,500,000) for the 2007-2008 fiscal year and the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be used to develop a pilot program to reduce State psychiatric hospital use and to increase local services for persons with mental illness. Of these funds, the sum of two hundred fifty thousand dollars ($250,000) in each fiscal year shall be retained by the Department. The remainder in each fiscal year shall be allocated to LMEs to be used in accordance with this section. The Division and each selected LME shall implement an 18-month pilot beginning in the 2007-2008 fiscal year, as provided in subsections (s2) and (s3) of this section. It is the intent of the General Assembly to provide funds to expand the pilot program in the 2008-2009 fiscal year. To this end, the Division shall develop a plan for expanded pilots as provided in subsection (s4) of this section.

"(s2) The purpose of the 18-month pilot program developed under subsection (s1) of this section and to be implemented during the 2007-2008 fiscal year is to test a mechanism to reduce psychiatric hospital use by holding an LME financially and clinically responsible for the cost of that use and by providing additional resources to build community capacity. The Department shall select up to three LMEs in the same catchment area and at least one LME in a different catchment area that submit a proposal to participate in the pilot to the Division no later than October 15, 2007. The proposal shall include a plan by the LME to reduce hospital use by a specified amount and an explanation of how the LME expects to accomplish this goal. To facilitate pilot implementation, the Division shall do all of the following:

"(1) Calculate the cost of each LME's 2006-2007 use of State psychiatric hospital services based roughly on that hospital's total budget and the percentage of patients at the hospital admitted from the LME's catchment area.

"(2) Calculate a daily rate for hospital usage based on 2006-2007 statewide usage. The daily rate shall be higher for subsequent admissions by the same patient and higher for patients admitted with a primary diagnosis of substance abuse.

"(3) Provide the results from subdivisions (1) and (2) of this subsection to all LMEs not later than September 1, 2007.

"(4) Award pilot participation not later than November 1, 2007, based upon the proposals that project the largest decrease in use and that the Division believes has the greatest likelihood of succeeding.

"(5) Commence pilot implementation not later than January 1, 2008.

"(s3) Parameters of the pilot developed under subsection (s1) of this section are as follows:

"(1) The pilot LMEs will have a virtual budget account for January 1, 2008, through June 30, 2008, based on one-half of the LME's cost of State psychiatric hospital use during the 2006-2007 fiscal year minus the LME's proposed reduction in hospital use. The virtual budget account will be for the full amount less an agreed upon reduction in the second year of the pilot.

"(2) Every bed day used by patients from that LME's catchment area will be debited against that LME's virtual account.

"(3) The cost of bed days will increase by the agreed upon amount for patients who are repeatedly admitted to the hospital.

"(4) The cost of bed days will increase by the agreed upon amount for patients who are admitted with a primary diagnosis of substance abuse.

"(5) The LME shall have one or more representatives on site at the State psychiatric hospital. The LME representatives shall be involved with patient admissions, development of treatment plans, supervision and delivery of treatment, and development and implementation of discharge plans.

"(6) The pilot LMEs shall use their allocated funds to: (i) build community capacity through start-up operations or payment for local services; (ii) pay for the on-site representative at State psychiatric hospitals; and (iii) pay for patient bed days that are in excess of RFP's projected use.

"(7) Any funds remaining from the two million two hundred fifty thousand dollar ($2,250,000) allocation shall carry over to be used by the LMEs to pay for services to the mentally ill.

"(s4) Based on the experiences of the pilot programs authorized under subsections (s2) and (s3) of this section, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) shall work with the existing hospital use study group to develop a proposal for subsequent pilots to reduce hospital use and build community services. The Division may use up to two hundred fifty thousand dollars ($250,000) in each fiscal year to develop the proposal. The Division shall submit an interim report on its progress to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Oversight Committee) by October 15, 2007, and a second interim report by February 1, 2008. The Division shall submit its final report to the Oversight Committee by February 1, 2009. The final report shall include a description of the pilot LMEs' success in working with local hospitals and the resulting reductions in the use of emergency rooms, jails, and State facilities.

"(s5) The budgets for the State psychiatric hospitals shall not be reduced during the 2007-2008 fiscal year as a result of the pilot developed under subsection (s1) of this section. However, those budgets shall be adjusted in following years to reflect the previous year's use by the LMEs participating in the pilot program."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2009-191, s. 2, provides: "The Department of Health and Human Services shall analyze the effectiveness of single stream funding in the expenditure of State funds and review the allocation of service dollars to specific disabilities of LMEs that utilize single stream funding for a year or more and report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by June 1, 2010."

Effect of Amendments. — Session Laws 2009-191, s. 1, effective July 1, 2009, added subdivisions (a)(15) and (16).

§ 122C-118: Repealed by Session Laws 2001-437, s. 1.11, effective July 1, 2002.

§ 122C-118.1. Structure of area board.

(a) An area board shall have no fewer than 11 and no more than 25 members. However, the area board for a multicounty area authority consisting of eight or more counties may have up to 30 members. In a single-county area authority, the members shall be appointed by the board of county commissioners. Except as otherwise provided, in areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. The boards of county commissioners within the multicounty area shall have the option to appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation, representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board shall include two individuals with financial expertise, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

(b) Except as otherwise provided in this subsection, not more than fifty percent (50%) of the members of the area board shall represent the following:

(1) A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry.

(2) A clinical professional from the fields of mental health, developmental disabilities, or substance abuse.

(3) At least one family member or individual from a citizens' organization composed primarily of consumers or their family members, representing the interests of individuals:
  a. With mental illness;
  b. In recovery from addiction; or
  c. With developmental disabilities.

(4) At least one openly declared consumer:
  a. With mental illness;
  b. With developmental disabilities; or
  c. In recovery from addiction.

An individual that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve on the board of the LME for the period during which the contract for services is in effect.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently no more than two categories of membership if the member has the qualifications or attributes of the two categories of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for three years, except that upon the initial formation of an area board one-third shall be appointed for one year, one-third for two years, and all remaining members for three years. Members shall not be appointed for more than two consecutive terms. Board members serving as of July 1, 2006, may remain on the board for one additional term.

(e) Upon request, the board shall provide information pertaining to the membership of the board that is a public record under Chapter 132 of the General Statutes. (2001-437, s. 1.11(b); 2002-159, s. 40(a); 2006-142, s. 4(e); 2007-504, s. 1.4.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-119. Organization of area board.

(a) The area board shall meet at least six times per year.

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.

(d) The area board shall establish a finance committee that shall meet at least six times per year to review the financial strength of the area program. The finance committee shall have a minimum of three members, two of whom have expertise in budgeting and fiscal control. The member of the area board who is the county finance officer or individual with financial expertise shall serve as an ex officio member. All other finance officers of participating counties in a multicounty area authority may serve as ex officio members. If the area board so chooses, the entire area board may function as the finance committee; however, its required meetings as a finance committee shall be distinct from its meetings as an area board. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; 1979, c. 358, ss. 6, 23; c. 455; 1981, c. 52; 1983, c. 6; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 749, s. 4; 2001-437, s. 1.11(c).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-119.1. Area Authority board members' training.

All members of the governing body for an area authority shall receive initial orientation on board members' responsibilities and training provided by the Department in fiscal management, budget development, and fiscal accountability. A member's refusal to be trained shall be grounds for removal from the board. (1995, c. 507, s. 23.3; 1995 (Reg. Sess., 1996), c. 749, s. 5.)

§ 122C-120. Compensation of area board members.

(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board. The amount of per diem allowance shall not exceed fifty dollars ($50.00). Reimbursement of subsistence expenses shall be at the rates allowed to State officers and employees under G.S. 138-6(a)(3).

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 28; 1985, c. 589, s. 2; 2000-67, s. 11.18.)

§ 122C-120.1. Job classifications; director and finance officer.

(a) The Office of State Personnel shall develop a job classification for director of an area authority or county program that reflects the skills required of an individual operating a local management entity. The Office of State Personnel shall also review the job classifications for area authority and county program finance officers to determine whether they reflect the skills necessary to manage the finances of a local management entity. The Commission shall adopt a job classification for director and any new or revised job classifications for finance officers no later than December 31, 2006.

(b) The job classifications developed under subsection (a) of this section shall apply to persons newly hired on or after January 1, 2007. (2006-142, s. 4(h).)

Editor's Note. — Session Laws 2006-142, s. 8, made this section effective July 19, 2006.

§ 122C-121. Area director.

(a) The area director is an employee of the area board, shall serve at the pleasure of the board, and shall be appointed in accordance with G.S. 122C-117(7). As used in this subsection, "employee" means an individual and does not include a corporation, a partnership, a limited liability corporation, or any other business association.

(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. An area board may request an adjustment to the salary ranges under G.S. 126-9(b). The request shall include specific information supporting the need for the adjustment, including comparative salary and patient caseload data for other LMEs, and shall also include the specific amount the area board proposes to pay the director. The area board shall not request a salary adjustment that is more than ten percent (10%) above the normal allowable salary range as determined by the State Personnel Commission.

(a2) The area board shall not provide the director with any benefits that are not also provided by the area board to all permanent employees of the area program. The director shall be reimbursed only for allowable employment-related expenses at the same rate and in the same manner as other employees of the area program.

(b) The area board shall evaluate annually the area director for performance based on criteria established by the Secretary and the area board. In conducting the evaluation, the area board shall consider comments from the board of county commissioners.

(c) The area director is the administrative head of the area program. In addition to the duties under G.S. 122C-111, the area director shall:

(1) Appoint, supervise, and terminate area program staff.
(2) Administer area authority services.
(3) Develop the budget of the area authority for review by the area board.
(4) Provide information and advice to the board of county commissioners through the county manager.
(5) Act as liaison between the area authority and the Department.

(d) Except when specifically waived by the Secretary, the area director shall meet all the following minimum qualifications:

(1) Masters degree.
(2) Related experience.
(3) Management experience.
(4) Any other qualifications required under G.S. 122C-120.1. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.12; 2006-142, s. 4(k); 2007-323, s. 6.20(a).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2007-323, s. 6.20(b), provides that subsections (a1) and (a2) apply to salary plans submitted and contracts entered into, extended, modified or renewed on or after July 1, 2007.

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 122C-122. Public guardians.

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter. Bond shall be required or purchased as provided by G.S. 35A-1239. (1977, c. 679, s. 7; c. 725, s. 7; 1979, c. 358, s. 26; 1985, c. 589, s. 2; 1987, c. 550, s. 26.)

§ 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10), G.S. 122C-117(a)(1), G.S. 122C-127, and G.S. 122C-131, other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities. (1987, c. 830, s. 47(e); 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 690, s. 11.)

§ 122C-123.1. Area authority reimbursement to State for disallowed expenditures.

Any funds or part thereof of an area authority that are transferred by the area authority to any entity including a firm, partnership, corporation, company, association, joint stock association, agency, or nonprofit private foundation shall be subject to reimbursement by the area authority to the State when expenditures of the area authority are disallowed pursuant to a State or federal audit. (1999-237, s. 11.41.)

Editor's Note. — Session Laws 1999-237, s. 11.41, originally enacted section as G.S. 122C-123A. It was subsequently redesignated as G.S. 122C-123.1 at the direction of the Revisor of Statutes.

§ 122C-124: Repealed by Session Laws 2001-437, s. 1.13(a), effective July 1, 2002.

§ 122C-124.1. Actions by the Secretary when area authority or county program is not providing minimally adequate services.

(a) Notice of Likelihood of Action. — When the Secretary determines that there is a likelihood of suspension of funding, assumption of service delivery or management functions, or appointment of a caretaker board under this section within the ensuing 60 days, the Secretary shall so notify in writing the area authority board or the county program and the board of county commissioners of the area authority or county program. The notice shall state the particular deficiencies in program services or administration that must be remedied to avoid action by the Secretary under this section. The area authority board or county program shall have 60 days from the date it receives notice under this subsection to take remedial action to correct the deficiencies. The Secretary shall provide technical assistance to the area authority or county program in remedying deficiencies.

(b) Suspension of Funding; Assumption of Service Delivery or Management Functions. — If the Secretary determines that a county, through an area authority or county program, is not providing minimally adequate services to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area authority or county program and to the board of county commissioners of the area authority or county program, and after providing the area authority or county program and the boards of county commissioners of the area authority or county program an opportunity to be heard, may:

(1) Withhold funding for the particular service or services in question from the area authority or county program and ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

Upon suspension of funding, the Department shall direct the development and oversee implementation of a corrective plan of action and provide notification to the area authority or county program and the board of county commissioners of the area authority or county program of any ongoing concerns or problems with the area authority's or county program's finances or delivery of services.

(2) Assume control of the particular service or management functions in question or of the area authority or county program and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority or county program of its powers in G.S. 122C-115.1 and G.S. 122C-117 and all other service delivery powers conferred on the area authority or county program by law as they pertain to this service or management function. County funding of the area authority or county program shall continue when the State has assumed control of the catchment area or of the area authority or county program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority or county program.

Upon assumption of control of service delivery or management functions, the Department shall, in conjunction with the area authority or county program, develop and implement a corrective plan of action and provide notification to the area authority or county program and the board of county commissioners of the area authority or county program of the plan. The Department shall also keep the area authority board and the board of county commissioners informed of any ongoing concerns or problems with the delivery of services.

(c) Appointment of Caretaker Administrator. — In the event that a county, through an area authority or county program, fails to comply with the corrective plan of action required when funding is suspended or when the State assumes control of service delivery or management functions, the Secretary, after providing written notification of the Secretary's intent to the area authority or county program and the applicable participating boards of county commissioners of the area authority or county program, shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the area director or program director or of the area authority board or board of county commissioners of the area authority or county program pertaining to the operation of mental health, developmental disabilities, and substance abuse services to the caretaker board or to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority or county program by law pertaining to the operation of mental health, developmental disabilities, and substance abuse services. County funding of the area authority or county program shall continue when the State has assumed control of the financial affairs of the program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority or county program. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the area director or program director when it appoints a caretaker administrator. Chapter 150B of the General Statutes shall apply to the decision to terminate the area director or program director. Neither party to any such contract shall be entitled to damages. After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority or county program. (2001-437, s. 1.13(b); 2008-107, s. 10.15(ee).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15(ee), effective July 1, 2008, deleted "in accordance with rules adopted by the Secretary or the Commission" following "minimally adequate services" in the introductory language of subsection (b).

§ 122C-125. Area Authority financial failure; State assumption of financial control.

At any time that the Secretary of the Department of Health and Human Services determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The Secretary shall adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

Upon assumption of financial control, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances. (1995, c. 507, s. 23.2; 1995 (Reg. Sess., 1996), c. 749, s. 7; 1997-443, s. 11A.118(a).)

§§ 122C-125.1, 122C-126: Repealed by Session Laws 2001-437, s. 1.13(a), effective July 1, 2002.

Part 2A. Consolidated Human Services.

§ 122C-127. Consolidated human services board; human services director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S.

153A-77, a consolidated human services agency shall have the responsibility and authority set forth in G.S. 122C-117(a) to carry out the programs established in this Chapter in conformity with the rules and regulations of the Department and under the supervision of the Secretary in the same manner as an area authority. In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of the governing unit of an area authority as provided by G.S. 122C-117(b), except that the consolidated human services board may not:

(1) Appoint the human services director.

(2) Transmit or present the budget for social services programs.

(3) Enter into contracts, including contracts to provide services to governmental or private entities, unless specifically authorized to do so by the board of county commissioners in accordance with county contracting policies and procedures.

(b) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of an area director as provided by G.S. 122C-121, except that the human services director may:

(1) Serve as the executive officer of the consolidated human services board only to the extent and in the manner authorized by the county manager.

(2) Appoint staff of the consolidated human services agency only upon the approval of the county manager.

The human services director is not an employee of the area board, but serves as an employee of the county under the direct supervision of the county manager. (1995 (Reg. Sess., 1996), c. 690, s. 12.)

§§ 122C-128 through 122C-130: Reserved for future codification purposes.

Part 3. Service Delivery System.

§ 122C-131. Composition of system.

Mental health, developmental disabilities, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities. (1985, c. 589, s. 2; 1989, c. 625, s. 15.)

CASE NOTES

Cited in Jackson v. North Carolina Dep't of Human Res., 131 N.C. App. 179, 505 S.E.2d 899, 1998 N.C. App. LEXIS 1306 (1998).

§§ 122C-132, 122C-132.1: Repealed by Session Laws 2001-437, s. 1.14, effective July 1, 2002.

§§ 122C-133 through 122C-140: Reserved for future codification purposes.

Part 4. Area Facilities.

§ 122C-141. Provision of services.

(a) The area authority or county program shall contract with other qualified public or private providers, agencies, institutions, or resources for the provision of services, and, subject to the approval of the Secretary, is authorized to provide services directly. The area authority or county program shall indicate in its local business plan how services will be provided and how the provision of services will address issues of access, availability of qualified public or private providers, consumer choice, and fair competition. The Secretary shall take into account these issues when reviewing the local business plan and considering approval of the direct provision of services. Unless an area authority or county program requests a shorter time, any approval granted by the Secretary shall be for not less than one year. The Secretary shall develop criteria for the approval of direct service provision by area authorities and county programs in accordance with this section and as evidenced by compliance with the local business plan. For the purposes of this section, a qualified public or private provider is a provider that meets the provider qualifications as defined by rules adopted by the Secretary.

(b) All area authority or county program services provided directly or under contract shall meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. The Secretary may delay payments and, with written notification of cause, may reduce or deny payment of funds if an area authority or county program fails to meet these requirements.

(c) The area authority or board of county commissioners of a county program may contract with a health maintenance organization, certified and operating in accordance with the provisions of Article 67 of Chapter 58 of the General Statutes for the area authority or county program, to provide mental health, developmental disabilities, or substance abuse services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority or county program and the general and fiscal operation of an area authority or county program and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the Secretary and pending the timely reimbursement of the contractual charges, the area authority or county program may expend funds for costs which may be incurred by the area authority or county program as a result of providing the additional services under a contractual agreement with a health maintenance organization.

(d) If two or more counties enter into an interlocal agreement under Article 20 of Chapter 160A of the General Statutes to be a public provider of mental health, developmental disabilities, or substance abuse services ("public provider"), before an LME may enter into a contract with the public provider, all of the following must apply:

(1) The public provider must meet all the provider qualifications as defined by rules adopted by the Commission. A county that satisfies its duties under G.S. 122C-115(a) through a consolidated human services agency may not be considered a qualified provider for purposes of this subdivision.

(2) The LME must adopt a conflict of interest policy that applies to all provider contracts.

(3) The interlocal agreement must provide that any liabilities of the public provider shall be paid from its unobligated surplus funds and that if those funds are not sufficient to satisfy the indebtedness, the remaining indebtedness shall be apportioned to the participating counties.

(e) When enforcing rules adopted by the Commission, the Secretary shall ensure that there is fair competition among providers. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 839; 1989, c. 625, s. 16; 2001-437, s. 1.15; 2006-142, s. 4(*l*); 2007-504, s. 2.4(a).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2007-504, s. 2.4(b), provides: "The Department of Health and Human Services shall study the effect of G.S. 122C-141(d) and shall report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by December 1, 2009."

Session Laws 2007-504, s. 2.6, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the statutory rule-making authority of the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. In conducting its study, the LOC shall determine whether there is duplication, conflict, or lack of clarity with respect to the Secretary's rule-making authority and that of the Commission. The LOC may also consider whether rule making should be more clearly divided between the Secretary and the Commission and, if so, how and for what reasons. The LOC shall report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly upon its convening."

§ 122C-142. Contract for services.

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility. An area authority or county program that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met.

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; 1985, c. 589, s. 2; 2006-142, s. 1; 2006-259, s. 23.)

§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Services. — An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility authorized by the Department to provide this service, or, with the approval of the Department, from an agency that is located in another state.

(a1) Authorization of a Private Facility Provider. — The Department shall authorize a private facility located in this State to provide substance abuse services needed by a person to obtain a certificate of completion if the private facility complies with all of the requirements of this subsection:

(1) Notifies both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services.

(2) Agrees to comply with the laws and rules concerning these services that apply to area facilities.

(3) Pays the Department the applicable fee for authorizing and monitoring the services of the facility. The initial fee is payable at the time the facility notifies the Department of its intent to provide the services and by July 1 of each year thereafter. Collected fees shall be used by the Division for program monitoring and quality assurance. The applicable fee is based upon the number of assessments completed during the prior fiscal year as set forth below:

Number of Assessments	Fee Amount
0-24	$250.00
25-99	$500.00
100 or more	$750.00.

(b) Assessments.— To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM). The signature on the recommendation shall be the personal signature of the individual authorized to review the recommendation and not the signature of his or her agent. The signature shall reflect that the authorized individual has personally reviewed the recommendation and, with full knowledge of the contents of the recommendation, approved of the recommended treatment.

(b1) Persons Authorized to Conduct Assessments. — The following individuals are authorized to conduct a substance abuse assessment under subsection (b) of this section:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) A Licensed Clinical Addiction Specialist (LCAS), as defined by the Commission.

(3) Repealed by Session Laws 2004-197, s. 2, effective October 1, 2008, and applicable to substance abuse assessments conducted on or after that date.

G.S. 122C-142.1(f) is set out twice. See note.

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(4) A person licensed by the North Carolina Medical Board or the North Carolina Psychology Board.

(5) A physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. — Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.

(2) The person has a prior conviction of an offense involving impaired driving.

(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. — An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(d1) Persons Authorized to Provide Instruction. — Beginning January 1, 2009, individuals who provide ADET school instruction as a Department-authorized ADETS instructor must have at least one of the following qualifications:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) A Licensed Clinical Addictions Specialist (LCAS), as defined by the Commission.

(3) A Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission.

(e) Certificate of Completion. — Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) **(See note for expiration date)** Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a treatment facility or school a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

G.S. 122C-142.1(f) is set out twice. See note.

(f) **(See note for effective date)** Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a school a fee of one hundred sixty dollars ($160.00). A person shall pay to a treatment facility a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

A facility shall remit to the Department ten percent (10%) of each fee paid to the facility under this subsection by a person who attends an ADET school conducted by the facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(f1) Multiple Assessments. — If a person has more than one offense for which a certificate of completion is required under G.S. 20-17.6, the person shall pay the assessment fee required under subsection (f) of this section for each certificate of completion required. However, the facility shall conduct only one substance abuse assessment and recommend only one ADET school or treatment program for all certificates of completion required at that time, and the person shall pay the fee required under subsection (f) of this section for only one school or treatment program.

If any of the criteria in subdivisions (c)(1), (c)(2), or (c)(3) of this section are present in any of the offenses for which the person needs a certificate of completion, completion of a treatment program shall be required pursuant to subsection (c) of this section.

The provisions of this subsection do not apply to subsequent assessments performed after a certificate of completion has already been issued for a previous assessment.

(g) Out-of-State Services. — A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. — The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. — The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services.

(j) The Department shall establish an outcomes evaluation study on the effectiveness of substance abuse services provided to persons who obtain a certificate of completion under G.S. 20-17.6 as a condition for restoration of a drivers license. The findings of the study shall be reported every two years to the Joint Legislative Commission on Governmental Operations. The Department shall submit an initial report on the findings of the study to the Commission no later than December 31, 2007, and shall submit a report to the Commission every two years following that date. (1995, c. 496, ss. 10, 13; 2001-370, s. 9; 2003-396, ss. 1, 3, 4; 2004-197, ss. 1, 2, 3; 2005-312, ss. 1, 2, 4; 2008-130, ss. 7, 8.)

Subsection (f) Set Out Twice. — The first version of subsection (f) set out above is effective until rules adopted pursuant to Session Laws 2005-312, s. 3, become effective. The second version of subsection (f) set out above is effective thereafter.

Editor's Note. — Session Laws 1995, c. 496, s. 14, provided that this section became effective January 1, 1996, and was applicable to offenses occurring on or after that date, and that s. 13, which substituted "less than 21 years old" for "a provisional licensee" in the catchline, became effective only if House Bill 353 of the 1995 General Assembly was enacted. House Bill 353 was ratified as Session Laws 1995, c. 506, on July 28, 1995.

Subsection (b1), added by Session Laws 2004-197, s. 1, effective October 1, 2005, is applicable to substance abuse assessments conducted on or after that date.

Pursuant to Session Laws 2005-312, s. 5, amendments to subsection (f) of this section are effective when the rules adopted under section 3 of the act become effective and shall apply to fees charged for ADET School Instruction that commences on or after that date.

Effect of Amendments. — Session Laws 2004-197, s. 2, effective October 1, 2008, and applicable to substance abuse assessments conducted on or after that date, repealed subdivision (b1)(3) which read: "(3) A Substance Abuse Counselor Intern who is supervised by a Certified Clinical Supervisor (CCS), as defined by the Commission, and who meets the minimum qualifications established by the Commission for individuals performing substance abuse assessments."

Session Laws 2008-130, ss. 7 and 8, effective July 28, 2008, in subdivision (b1)(2), substituted "Licensed" for "Certified" and substituted "(LCAS)" for "(CCAS)"; made minor grammatical changes throughout subsection (d1); and in subdivision (d1)(2), substituted "Licensed" for "Certified," substituted "Addictions" for "Addiction," and substituted "(LCAS)" for "(CCAS)."

§ 122C-143: Repealed by Session Laws 1993, c. 321, s. 220.

§ 122C-143.1. Policy guidance.

(a) The General Assembly shall, as it considers necessary, endorse as policy guidance long-range plans for the broad age/disability categories of persons to be served and the services to be provided by area authorities.

(b) The Secretary shall develop a payment policy that designates, within broad age/disability categories, the priority populations, based on their disability level and the types of service to be supported by State resources. The Secretary shall review the Department's payment policy annually to assure that payments are made consistent with the State's long-range plans.

(c) The Secretary shall ensure that the payment policy provides incentives designated to target resources consistent with legislative policy and with the State's long-range plans and to promote equal accessibility to services for individuals regardless of their catchment area.

(d) Upon request of the Secretary, each area authority shall develop, revise, or amend its local long-range plans to be consistent with the policy guidance set forth in the State's long-range plans. Local service implementation plans shall be subject to the approval of the Secretary.

(e) The Secretary shall ensure that the Department's requests for expansion funds for area authorities are consistent with the State's long-range plans and include consideration of needs identified by the area authorities and their local plans. (1993, c. 321, s. 220(e).)

§ **122C-143.2:** Repealed by Session Laws 2001-437, s. 1.16, effective July 1, 2002.

Editor's Note. — Session Laws 2002-159, s. 40(b), effective October 11, 2002, had substituted "G.S. 122C-147.1(d)(2)" for "G.S. 147.1(c)92)" in subsection (c).

§ **122C-144:** Repealed by Session Laws 1993, c. 321, s. 220(d), effective July 1, 1993.

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Cross References. —

§ 122C-144.1. Budget format and reports.

(a) The area authority shall maintain its budget in accordance with the requirements of Article 3 of Subchapter III of Chapter 159 of the General Statutes, the Local Government Budget and Fiscal Control Act.

(b) The Secretary may require periodic reports of receipts and expenditures for all area authority services provided directly or under contract according to a format prescribed by the Secretary.

(c) In accordance with G.S. 159-34, the area authority shall have an audit completed and submit it to the Local Government Commission.

(d) The Secretary may require reports of client characteristics, staffing patterns, agency policies or activities, services, or specific financial data of the area authority, but the reports shall not identify individual clients of the area authority unless specifically required by State statute or federal statute or regulation, or unless valid consent for the release has been given by the client or legally responsible person. (1993, c. 321, s. 220(g).)

§ **122C-145:** Renumbered as G.S. 122C-151.2 by Session Laws 1993, c. 321, s. 220.

§ 122C-146. Uniform co-payment schedule.

(a) The LME and its contractual provider agencies shall implement the co-payment schedule based on family income adopted by the Secretary under G.S. 122C-112.1(a)(34). The LME is responsible for determining the applicability of the co-payment to individuals authorized by the LME to receive services. An LME that provides services and its contractual provider agencies shall also make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals or entities able to pay, including insurance and third-party payments. However, no individual may be refused services because of an inability to pay.

(b) Individuals may not be charged for free services, as required in "The Amendments to the Education of the Handicapped Act", P.L. 99-457, provided to eligible infants and toddlers and their families. This exemption from charges does not exempt insurers or other third-party payors from being charged for payment for these services, if the person who is legally responsible for any eligible infant or toddler is first advised that the person may or may not grant permission for the insurer or other payor to be billed for the free services.

(c) All funds collected from co-payments for LME operated services shall be used to provide services to individuals in targeted populations.

The collection of co-payments by an LME that provides services may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue. All funds collected from co-payments by contractual provider agencies shall be used to provide services to individuals in targeted populations. (1977, c. 568, s. 1; 1979, c. 358, s. 16; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1003, s. 4; 1991, c. 215, s. 2; 1993, c. 487, s. 3; c. 553, s. 36; 2007-410, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1003, s. 6 provided: "Sections 1 through 4 of this act [which amended this section] shall become effective July 1, 1990, and Section 5 of this act shall become effective July 1, 1991, if and only if specific funds are appropriated for the specific programs established by this act. Funds appropriated for the 1990-91 fiscal year or for any year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions." An appropriation was made to implement the provisions of this act in the 1989 (Reg. Sess., 1990) Session.

Session Laws 2007-410, s. 3, provides: "The Secretary of the Department of Health and Human Services shall identify all services that are funded by or through the Department's budget and that do not require income-based criteria in order for an individual to be eligible to receive the service. The Secretary shall develop a proposal for implementing income-based criteria for eligibility for those programs and shall submit the proposal to the General Assembly and the Fiscal Research Division by November 1, 2007."

Effect of Amendments. — Session Laws 2007-410, s. 1, effective July 1, 2008, and applicable to services provided on or after that date, rewrote the section.

§ 122C-147. Financing and title of area authority property.

(a) Repealed by Session Laws 1993, c. 321, s. 220(i).

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a facility or (ii) in contracting with a private, nonprofit corporation or with another governmental

entity that operates facilities for the mentally ill, developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation or with the governmental entity, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation or governmental entity.

(2) Upon cessation of the use of the facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section or by specific capital funds appropriated by the General Assembly. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it, including the area authority's authority to finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area authority or by the contracting governmental entity with the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property. An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a lease-purchase agreement. An area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. The area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the Local Government Commission, when required by that statute. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and shall not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation or by another governmental entity and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation or by another governmental entity under contract with the area authority and used or to be used as a facility. Prior to the use of county appropriated funds for this purpose, the area authority shall obtain consent of the board or boards of commissioners of all the counties that comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2; 1987, c. 720, s. 3; c. 784; 1989, c. 625, s. 17; 1993, c. 321, s. 220(h), (i); 1993 (Reg. Sess., 1994), c. 592, s. 1; 1995, c. 305, s. 1.)

Editor's Note. — Subsection (a) of this section, concerning allocation of funds for area mental health, developmental disabilities, and substance abuse services, was repealed by Session Laws 1993, c. 321, s. 220. For present similar provisions, see G.S. 122C-147.1.

Section 122C-145, referred to in subsection (g), was renumbered as G.S. 122C-151.2 by Session Laws 1993, c. 321, s. 220(m), effective January 1, 1993.

For elimination of administration, infrastructure, funding designation, and eligibility determination process for former Willie M program, see note at G.S. 143B-137.1 under "Services to Children at Risk for Institutionalization or Other Out-of-Home Placement."

§ 122C-147.1. Appropriations and allocations.

(a) Except as provided in subsection (b) of this section, funds shall be appropriated by the General Assembly in broad age/disability categories. The Secretary shall allocate and account for funds in broad age/disability categories so that the area authority may, with flexibility, earn funds in response to local needs that are identified within the payment policy developed in accordance with G.S. 122C-143.1(b).

(b) When the General Assembly determines that it is necessary to appropriate funds for a more specific purpose than the broad age/disability category, the Secretary shall determine whether expenditure accounting, special reporting within earning from a broad fund, the Memorandum of Agreement, or some other mechanism allows the best accounting for the funds.

(b1) Notwithstanding subsection (b) of this section, funds appropriated by the General Assembly for crisis services shall not be allocated in broad disability or age/disability categories. Subsection (c) of this section shall not apply to funds appropriated by the General Assembly for crisis services.

(c) Funds that have been appropriated by the General Assembly for a more specific purpose than specified in subsection (a) of this section shall be converted to a broad age/disability category at the beginning of the second biennium following the appropriation, unless otherwise acted upon by the General Assembly.

(d) The Secretary shall allocate funds to area programs:

(1) To be earned in a purchase of service basis, at negotiated reimbursement rates, for services that are included in the payment policy and delivered to mentally ill, developmentally disabled, and substance abuse clients and for services that are included in the payment policy to other recipients; or

(2) To be paid under a grant on the basis of agreed-upon expenditures, when the Secretary determines that it would be impractical to pay on a purchase of service basis.

(d1) Notwithstanding subsections (b) and (d) of this section, each area program shall determine whether to earn the funds for crisis services and funds for services to substance abuse clients in a purchase-for-service basis, under a grant, or some combination of the two. Area programs shall account for funds expended on a grant basis according to procedures required by the Secretary and in a manner that is similar to funds expended in a purchase-for-service basis.

(e) After the close of a fiscal year, final payments of funds shall be made:

(1) Under the purchase of service basis, on the earnings of the area authority for the delivery to individuals within each age/disability group, of any services that are consistent with the payment policy established in G.S. 122C-143.1(b), up to the final allocation amount; or

(2) When awarded on an expenditure basis, on allowable actual expenditures, up to the final allocation amount.

Under rules adopted by the Secretary, final payments shall be adjusted on the basis of the audit required in G.S. 122C-144.1(d). (1993, c. 321, s. 220(j); 2007-323, ss. 10.49(b), (q).)

Editor's Note. — Session Laws 2006-32, s. 3, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the following issues and report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly:

"(1) Mechanisms to allow area authorities and county programs to purchase bed days from the State psychiatric hospitals. The LOC shall consider options for holding area authorities and county programs accountable for their use of State psychiatric institutions, provide incentives to increase community capacity, and options for ensuring the State institutions have a sufficient funding stream to ensure quality care to patients and a stable and well-qualified workforce.

"(2) Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the mental health, developmental disabilities, and substance abuse system. As part of the study, the LOC shall examine the impact of the waiver on Piedmont Behavioral Health's ability to implement its management functions including utilization management for Medicaid services, consumer satisfaction, provider monitoring, use of best practices, and any other matters the LOC determines are relevant. If the LOC determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it shall also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.

"(3) Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories."

Session Laws 2007-323, s. 10.49(cc), provides: "G.S. 122C-147.1(c) shall apply to the State-funded service of developmental therapies."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

§ 122C-147.2. Purchase of services and reimbursement rates.

(a) When funds are used to purchase services, the following provisions apply:

(1) Reimbursement rates for specific types of service shall be negotiated between the Secretary and the area authority. The negotiation shall begin with the rate determined by a standardized cost-finding and rate-setting procedure approved by the Secretary.

(2) The reimbursement rate used for the payment of services shall incorporate operating and administrative costs, including costs for property in accordance with G.S. 122C-147.

(b) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with subsection (a) of this section. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding. If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office. (1993, c. 321, s. 220(j); 2005-276, s. 10.30.)

Editor's Note. — Session Laws 2001-424, s. 21.56, as amended by Session Laws 2001-513, s. 1(i), and by Session Laws 2002-126, s. 10.25, provides: "(a) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding. The resulting cost shall be the maximum included for the private agency in the contracting are program's unit cost finding.

"(b) If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2002-126, s. 1.2, provides: "This act shall be known as 'The Current Operations, Capitol Improvements, and Finance Act of 2002'."

Session Laws 2002-126, s. 31.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2002-2003 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2002-2003 fiscal year. For example, uncodified provisions of this act relating to the Medicaid program apply only to the 2002-2003 fiscal year."

Session Laws 2002-126, s. 31.6 is a severability clause.

§§ 122C-148 through 122C-150: Repealed by Session Laws 1993, c. 321, s. 220.

Editor's Note. — For present provisions relating to appropriations and allocations, see G.S. 122C-147.1.

§ 122C-151. Responsibilities of those receiving appropriations.

(a) All resources allocated to and received by any area authority and used for programs of mental health, developmental disabilities, substance abuse or other related services are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary and to the conditions of the Memorandum of Agreement specified in G.S. 122C-143.2.

(b) If an area authority fails to complete actions necessary for the development of a Memorandum of Agreement, fails to file required reports within the time limit set by the Secretary, or fails to comply with any other requirements specified in this Article, the Secretary may:

(1) Delay payments; and

(2) With written notification of cause and subject to an appeal as provided by G.S. 122C-151.2, reduce or deny payment of funds. Restoration of funds upon compliance is within the discretion of the Secretary. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 25; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1989, c. 625, s. 19; 1993, c. 321, s. 220(*l*).)

§ 122C-151.1: Repealed by Session Laws 1993, c. 321, s. 220(n), as amended by Session Laws 1993 (Regular Session, 1994), c. 591, s. 7.

§ 122C-151.2. Appeal by area authorities and county programs.

(a) The area authority or county program may appeal to the Commission any action regarding rules under the jurisdiction of the Commission or rules under the joint jurisdiction of the Commission and the Secretary.

(b) The area authority or county program may appeal to the Secretary any action regarding rules under the jurisdiction of the Secretary.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150B of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 19; 1981, c. 51, s. 3; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 720, s. 3; 1993, c. 321, s. 220(m); 2001-437, s. 1.17(a).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-151.3. Dispute with area authorities or county programs.

An area authority or county program shall establish written procedures for resolving disputes over decisions of an area authority or county program that may be appealed to the State MH/DD/SA Appeals Panel under G.S. 122C-151.4. The procedures shall be informal and shall provide an opportunity for those who dispute the decision to present their position. (1993, c. 321, s. 220(o); 2001-437, s. 1.17(b).)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.

(a) Definitions. — The following definitions apply in this section:

(1) "Appeals Panel" means the State MH/DD/SA Appeals Panel established under this section.

(1a) "Client" means an individual who is admitted to or receiving public services from an area facility. "Client" includes the client's personal representative or designee.

(1b) "Contract" means a contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) "Contractor" means a person who has a contract or who had a contract during the current fiscal year, or whose application for endorsement has been denied by an area authority or county program.

(3) "Former contractor" means a person who had a contract during the previous fiscal year.

(b) Appeals Panel. — The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) Who Can Appeal. — The following persons may appeal to the State MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor who claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the contract;

(2) A contractor or a former contractor who claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract;

(3) A contractor or former contractor who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former contractor;

(4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county program; and

(5) A person who claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority

or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. — All members of the State MH/DD/SA Appeals Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person who appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. — The State MH/DD/SA Appeals Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. — A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH‡/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. The Secretary shall make a final decision in the contested case.

(g) This section does not apply to providers of community support services who appeal directly to the Department of Health and Human Services under the Department's community support provider appeal process. (1993, c. 321, s. 220(o); 2001-437, s. 1.17(c); 2008-107, s. 10.15A(h).)

Community Support Providers Appeals Process. — Session Laws 2008-107, s. 10.15A(e1)-(e4), as amended by Session Laws 2009-526, s. 2(c) and Session Laws 2009-550, s. 1.1(c), provides: "(e1) For the purpose of expediting the resolution of community support provider appeals and thereby saving State and federal funds that are paid for services that are found to be unnecessary or otherwise ineligible for payment, the Department shall implement on a temporary basis a community support provider appeals process. The process shall be a substitute for informal provider appeals at the Department level and formal provider appeals by the Office of Administrative Hearings. The community support provider appeals process shall apply to a community support services provider:

"(1) Who is aggrieved by a decision of the Department to reduce, deny, recoup, or recover reimbursement for community support services, or to deny, suspend, or revoke a provider agreement to provide community support services.

"(2) Whose endorsement has been withdrawn or whose application for endorsement has been denied by a local management entity.

"(e2) The community support provider appeals process shall be developed and implemented as follows:

"(1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, 'file or filing' means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.

"(2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:

"a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.

"b. The hearing is held in Wake County, except that the hearing officer may, take testimony and receive evidence by telephone or other electronic means. The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.

"c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall identify each witness that the party intends to call.

"(3) The hearing officer shall have the power to administer oaths and affirmations and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:

"a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.

"b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.

"c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.

"d. The appeal hearing shall be recorded. If a petition for judicial review is filed the Department shall include a copy of the recording of the hearing as part of the official record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

"(4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.

"(5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than 180 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

"(6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.

"(7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than 180 days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program.

"(e3) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may, pursuant to its statutory authority or federal Medicaid requirements, suspend the endorsement or Medicaid participation of a provider of community support services pending a final agency decision based on a fair hearing of the provider's appeal filed with the Department under its community support provider appeal process. A provider of community support services whose endorsement, Medicaid participation, or services have been suspended is not entitled to payment during the period the appeal is pending, and the Department shall make no such payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for provider services, and reimburse the provider for payments withheld during the period of appeal. Contracts between the Department or a local management entity and the provider shall contain a provision indicating the circumstances under which a provider may appeal an agency decision and giving notice of the suspension of payments to the provider while the appeal is pending. This subsection applies to community support provider appeals pending in the Department of Health and Human Services or the Office of Administrative Hearings, as applicable, on and after July 1, 2008.

"(e4) The Department's community support provider appeals process established under this section shall expire July 1, 2010. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on March 1, 2009, October 1, 2009, and March 1, 2010, on the effectiveness and efficiency of the community support provider appeals process."

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Some of the definitions in subsection (a) were renumbered at the direction of the Revisor of Statutes for purposes of alphabetical order.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 10.15A(h), effective July 1, 2008, inserted "or whose application for endorsement has been denied by an area authority or county program" in subdivision (a)(2); inserted "denying the contractor's application for endorsement or in" in subdivision (c)(1); added the third sentence in subsection (f); and added subsection (g).

§ 122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.

(a) An area authority, by securing liability insurance as provided in this section, may waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee, or board member of the area authority when acting within the scope of his authority or within the course of his duties or employment. Governmental immunity is waived by the act of obtaining this insurance, but it is waived by only to the extent that the area authority is indemnified by insurance for the negligence or tort.

(b) Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation licensed and authorized to execute insurance contracts in this State and shall by its terms adequately insure the area authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees, and board members of the area authority when acting within the course of their duties or employment. The area board shall determine the extent of the liability and what agents, employees by class, and board members are covered by any insurance purchased pursuant to this subsection. Any company or corporation that enters into a contract of insurance as described in this section with the authority, by this act waives any defense based upon the governmental immunity of the area authority.

(c) Any persons sustaining damages, or, in the case of death, his personal representative, may sue an area authority insured under this section for the recovery of damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority. It is no defense to any action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of the area authority if, and to the extent that, the authority has insurance coverage as provided by this section.

(d) Except as expressly provided by subsection (c) of this section, nothing in this section deprives any area authority of any defense whatsoever to any action for damages or to restrict, limit, or otherwise affect any defense which the area authority may have at common law or by virtue of any statute. Nothing in this section relieves any person sustaining damages nor any personal representative of any decedent from any duty to give notice of a claim to the area authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) The area authority may incur liability pursuant to this section only with respect to a claim arising after the authority has procured liability insurance pursuant to this section and during the time when the insurance is in force.

(f) No part of the pleadings that relate to or allege facts as to a defendant's insurance against liability may be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. This liability does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. These issues shall be heard and determined by the judge, and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

CASE NOTES

Sovereign Immunity Waived. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

§ 122C-153. Defense of agents, employees, and board members.

(a) Upon request made by or in behalf of any agent, employee, or board member or former agent, employee, or board member of the area authority, any area authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member. The defense may be provided by the local board by employing counsel or by purchasing insurance that requires that the insurer provide the defense. Nothing in this section requires any area authority to provide for the defense of any action or proceeding of any nature.

(b) An area authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees, or board members or former agents, employees, or board members when a claim is made or judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member of the area authority. Nothing in this section shall authorize any area authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees, or board members, or former agents, employees, or board members, if the authority finds that the agent, employee, or board member acted or failed to act because of actual fraud, corruption, or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section requires any authority to pay any claim or judgment referred to, and the purchase of insurance coverage for payment of the claim or judgment may not be considered an assumption of any liability not covered by the insurance contract and may not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in the insurance contract.

(c) Subsection (b) of this section does not authorize an authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the area authority before the time that the claim is settled or civil judgment is entered; and (ii) the area authority has adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees, or board members or former agents, employees, or board members shall be defended or paid.

(d) The board or boards of county commissioners that establish the area authority and the Secretary may allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments, and settlements under this section. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

§ 122C-154. Personnel.

Employees under the direct supervision of the area director are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. Employees appointed by the county program director are employees of the county. In a multicounty program, employment of county program staff shall be as agreed upon in the interlocal agreement adopted pursuant to G.S. 122C-115.1. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.18.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

CASE NOTES

Cited in Wright v. Blue Ridge Area Auth., 134 N.C. App. 668, 518 S.E.2d 772, 1999 N.C. App. LEXIS 899 (1999).

§ 122C-155. Supervision of services.

Unless otherwise specified, client services are the responsibility of a qualified professional. Direct medical and psychiatric services shall be provided by a qualified psychiatrist or a physician with adequate training and experience acceptable to the Secretary. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§ 122C-156. Salary plan for employees of the area authority.

(a) The area authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area, the salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, the salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

(b) An area authority may purchase life insurance or health insurance or both for the benefit of all or any class of authority officers or employees as a part of its compensation. An area authority may provide other fringe benefits for authority officers and employees.

(c) An area authority that is providing health insurance under subsection (b) of this section may provide health insurance for all or any class of former officers and employees of the area authority who are receiving benefits under Article 3 of Chapter 128 of the General Statutes. Health insurance may be paid entirely by the area authority, partly by the area authority and former officer or employee, or entirely by the former officer or employee, at the option of the area board. (1977, c. 568, s. 1; 1979, c. 358, ss. 15, 23; 1985, c. 589, s. 2.)

§ 122C-157. Establishment of a professional reimbursement policy.

The area authority shall adopt and enforce a professional reimbursement policy. This policy shall (i) require that fees for the provision of services received directly under the supervision of the area authority shall be paid to the area authority, (ii) prohibit employees of the area authority from providing services on a private basis which require the use of the resources and facilities of the area authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the area authority. (1977, c. 568, s. 1; 1979, c. 358, s. 17; 1985, c. 589, s. 2.)

§ 122C-158. Privacy of personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment to the area authority; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

(1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the inspection is considered by the official having custody of the records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law-enforcement officer or a law-enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official personnel decision, then the employee or an authorized agent has a right to inspect these materials.

(e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.

(f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars ($500.00).

(h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars ($500.00). (1983, c. 281; 1985, c. 589, s. 2; 1993, c. 539, ss. 924, 925; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 3.)

§§ 122C-159 through 122C-169: Reserved for future codification purposes.

Part 4A. Consumer and Family Advisory Committees.

§ 122C-170. Local Consumer and Family Advisory Committees.

(a) Area authorities and county programs shall establish committees made up of consumers and family members to be known as Consumer and Family Advisory Committees (CFACS). A local CFAC shall be a self-governing and a self-directed organization that advises the area authority or county program in its catchment area on the planning and management of the local public mental health, developmental disabilities, and substance abuse services system.

Each CFAC shall adopt bylaws to govern the selection and appointment of its members, their terms of service, the number of members, and other procedural matters. At the request of either the CFAC or the governing board of the area authority or county program, the CFAC and the governing board shall execute an agreement that identifies the roles and responsibilities of each party, channels of communication between the parties, and a process for resolving disputes between the parties.

(b) Each of the disability groups shall be equally represented on the CFAC, and the CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment area. The terms of members shall be three years, and no member may serve more than two consecutive terms. The CFAC shall be composed exclusively of:

(1) Adult consumers of mental health, developmental disabilities, and substance abuse services.

(2) Family members of consumers of mental health, developmental disabilities, and substance abuse services.

(c) The CFAC shall undertake all of the following:

(1) Review, comment on, and monitor the implementation of the local business plan.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the area authority or county program budget.

(5) Participate in all quality improvement measures and performance indicators.

(6) Submit to the State Consumer and Family Advisory Committee findings and recommendations regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.

(d) The director of the area authority or county program shall provide sufficient staff to assist the CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on business plans and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws. (2006-142, s. 5.)

Editor's Note. — Session Laws 2006-142, s. 8, made this Part effective July 19, 2006.

§ 122C-171. State Consumer and Family Advisory Committee.

(a) There is established the State Consumer and Family Advisory Committee (State CFAC). The State CFAC shall be shall be a self-governing and self-directed organization that advises the Department and the General Assembly on the planning and management of the State's public mental health, developmental disabilities, and substance abuse services system.

(b) The State CFAC shall be composed of 21 members. The members shall be composed exclusively of adult consumers of mental health, developmental disabilities, and substance abuse services; and family members of consumers of mental health, developmental disabilities, and substance abuse services. The terms of members shall be three years, and no member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority. The members shall be appointed as follows:

(1) Nine by the Secretary. The Secretary's appointments shall reflect each of the disability groups. The terms shall be staggered so that terms of three of the appointees expire each year.

(2) Three by the President Pro Tempore of the Senate, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(3) Three by the Speaker of the House of Representatives, one each of whom shall come from the three State regions for institutional

services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(4) Three by the Council of Community Programs, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(5) Three by the North Carolina Association of County Commissioners, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(c) The State CFAC shall undertake all of the following:

(1) Review, comment on, and monitor the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the State budget for mental health, developmental disabilities, and substance abuse services.

(5) Participate in all quality improvement measures and performance indicators.

(6) Receive the findings and recommendations by local CFACs regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.

(7) Provide technical assistance to local CFACs in implementing their duties.

(d) The Secretary shall provide sufficient staff to assist the State CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on the State Plan and departmental budget, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

(e) State CFAC members shall receive the per diem and allowances prescribed by G.S. 138-5 for State boards and commissions. (2006-142, s. 5; 2009-50, s. 1.)

Effect of Amendments. — Session Laws 2009-50, s. 1, effective January 1, 2010, deleted "General Assembly upon the recommendation of the" following "Three by the" in subdivisions (b)(2) and (b)(3).

§§ 122C-172 through 122C-180: Reserved for future codification purposes.

Part 5. State Facilities.

§ 122C-181. Secretary's jurisdiction over State facilities.

(a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

(1) Psychiatric Hospitals:

a. Cherry Hospital.

a1. **(Contingent effective date, see Editor's note)** Central Regional Hospital.

b. **(Contingent repeal date, see Editor's note)** Dorothea Dix Hospital.
c. **(Contingent repeal date, see Editor's note)** John Umstead Hospital.
d. Broughton Hospital.
(2) Developmental Centers:
a. Caswell Developmental Center.
b. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
b1. J. Iverson Riddle Developmental Center.
c. Murdoch Developmental Center.
d. through e. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
(3) Alcohol and Drug Treatment Centers:
a. Walter B. Jones Alcohol and Drug Abuse Treatment Center.
b. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
c. Julian F. Keith Alcohol and Drug Abuse Treatment Center.
d. R.J. Blackley Alcohol and Drug Treatment Center.
(4) Neuro-Medical Treatment Centers:
a. through c. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
d. Black Mountain Neuro-Medical Treatment Center.
e. O'Berry Neuro-Medical Treatment Center.
f. Longleaf Neuro-Medical Treatment Center.
(5) Residential Programs for Children:
a. Whitaker School.
b. Wright School.

(b) Subject to the requirements of subsection (c) of this section, the Secretary may, with the approval of the Governor and Council of State, close any State facility.

(c) Closure of a State facility under subsection (b) of this section becomes effective on the earlier of the 31st legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 10 days after the date the closure is approved, unless a different effective date applies under this subsection. If a bill that specifically disapproves the State facility closure is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the closure becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the State facility closure. If the Secretary specifies a later effective date for closure than the date that would otherwise apply under this subsection, the later date applies. Closure of a State facility does not become effective if the closure is specifically disapproved by a bill enacted into law before it becomes effective. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove closure of a facility that has been approved by the Governor and Council of State as provided in subsection (b) of this section. Nothing in this subsection shall be construed to impair the Secretary's power or duty otherwise imposed by law to close a State facility temporarily for the protection of health and safety. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C.S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1949, c. 1206, s. 1; 1955, c. 887, s. 1; 1959, c. 348, s. 1; c. 1002, s. 1; c. 1008; c. 1028, ss. 1-4; 1961, c. 513; c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 10, 12; c. 1184, s. 6; 1967, c. 151; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1975, c. 19, s. 41; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 77; c. 412, s. 4; 1983, c. 383, s. 9; 1985, c. 589, s. 2; 1989, c. 145, s. 1; 1991, c. 689, s. 136; 2001-437, s. 1.19; 2001-487, s. 80(a); 2007-177, ss. 1, 2.)

Editor's Note. — For preamble to Session Laws 2001-437, see the note at G.S. 122C-2.

Session Laws 2002-159, s. 91, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted by the University of North Carolina School of Medicine and the Psychology Department within the School of Arts and Sciences at the University of North Carolina at Chapel Hill at Dorothea Dix Hospital and John Umstead Hospital, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the School of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry, and the University of North Carolina School of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. Likewise, the Secretary shall consult with the University of North Carolina School of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina School of Arts and Sciences."

Session Laws 2003-314, s. 3.1, provides: "The Secretary of Health and Human Services shall maintain all existing educational and research programs in psychiatry and psychology conducted at Dorothea Dix Hospital and John Umstead Hospital by the University of North Carolina School of Medicine and by the Psychology Department within the College of Arts and Sciences at the University of North Carolina at Chapel Hill, unless the programs are otherwise modified by the University of North Carolina School of Medicine or the College of Arts and Sciences. The University of North Carolina School of Medicine shall retain authority over all educational and research programs in psychiatry and the University of North Carolina College of Arts and Sciences shall retain authority over all educational and research programs in psychology conducted at these hospitals and at any new State psychiatric hospital. The Secretary shall consult with the University of North Carolina School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of educational and research programs conducted by the University of North Carolina School of Medicine. In addition, the Secretary shall consult with the University of North Carolina College of Arts and Sciences to ensure appropriate continuation of educational and research programs conducted by the University of North Carolina College of Arts and Sciences."

Session Laws 2003-314, ss. 3.4(a), (a1), and (b), as amended by Session Laws 2004-124, s. 10.26A(a) and (b), as amended by Session Laws 2005-7, s. 1, and as amended by Session Laws 2006-248, s. 52, provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations, the 2005 General Assembly, and the Appropriations Committees of the Senate and the House of Representatives before any sale of any or all parts of the property. The Commission shall terminate upon submission of its final report.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Property Study Commission no later than September 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2006 Session of the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Cochairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of 11 members, five appointed by the President Pro

Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2006-248, s. 21, provides: "The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

"(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

"(2) The financial feasibility of the various uses.

"(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

"(4) Administrative or governance structures to implement the uses.

"The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007."

Session Laws 2006-248, s. 1, provides: "This act shall be known as "The Studies Act of 2006."

Session Laws 2007-177, s. 5, provides: "Section 2 of this act becomes effective when the Dorothea Dix Hospital is closed and is no longer serving psychiatric patients. The remainder of this act is effective when it becomes law."

Session Laws 2007-323, s. 10.49(t), provides: "Notwithstanding G.S. 122C-112.1(a)(30) and G.S. 122C-181, the Secretary of Health and Human Services may close Dorothea Dix Hospital, and the Secretary of Health and Human Services may close John Umstead Hospital or any unit or section of that hospital, provided that all of the following conditions have been met prior to closure of each hospital or unit thereof:

"(1) The Secretary has notified the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and members of the General Assembly who represent catchment areas affected by the closure.

"(2) The Secretary has presented a plan for the closure of each hospital or unit thereof to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Oversight Committee) for its review, advice, and recommendations. The Secretary shall also provide a copy of the plan to each member of the General Assembly in a timely manner to permit each member of the General Assembly to comment at the presentation of the plan to the Oversight Committee. The plan shall address specifically all of the following: (i) the capacity of any replacement facility and the catchment area to meet the needs of those consumers who require long-term secure services as well as acute care; (ii) an inventory of existing capacity in the communities within the catchment area for patients to access crisis services, appropriate housing, and other necessary supports; (iii) how the State and the LMEs in the catchment area will attract and retain qualified private providers that will provide services to State-paid non-Medicaid-eligible consumers; and (iv) the impact of the closure on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the Oversight Committee and other members of the General Assembly.

"(3) The Central Regional Hospital is operational and patient transfers from Dorothea Dix Hospital and John Umstead Hospital have been completed.

"(4) Notwithstanding any other provision of law, the Secretary shall not close a State facility if there are not adequate replacement services available prior to the date of closure."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Session Laws 2008-107, s. 10.15(h), provides: "In order to temporarily address high admissions to adult acute unit beds in the State psychiatric hospitals, the Secretary of the Department of Health and Human Services may, notwithstanding G.S. 122C-181 and G.S. 122C-112.1(a)(30), open and operate on a temporary basis up to 60 beds at the Central Regional Hospital Wake Unit on the Dorothea Dix Campus and may maintain the Wake Unit on the Dix Campus until beds become available in the system. Section 10.49(t) of S.L. 2007-323 does not apply to this subsection."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2007-177, s. 2, effective when the Dorothea Dix Hospital is closed and is no longer serving psychiatric patients, added subdivision (a)(1)a1 and deleted subdivisions (a)(1)b and (a)(1)c.

CASE NOTES

As a licensed dentist employed at a state mental hospital, petitioner was bound to follow both the rules and regulations of the Department of Human Resources, which regulate employees at those institutions, and the rules and regulations of the Board of Dental Examiners, which regulates the practice of all dentists practicing in North Carolina. Woodlief v. North Carolina State Bd. of Dental Exmrs., 104 N.C. App. 52, 407 S.E.2d 596 (1991).

§ 122C-182. Authority to contract with area authorities.

To establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary. (1985, c. 589, s. 2.)

§ 122C-183. Appointment of employees as police officers who may arrest without warrant.

The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. They have the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C.S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1; 1981, c. 635, s. 5; 1985, c. 589, s. 2.)

§ 122C-184. Oath of special police officers.

Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is:

State of North Carolina: ________ County.

I, ________, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called ________, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds. So help me, God.

Sworn and subscribed before me, this ____ day of ________, A.D. ____.

(1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C.S., s. 6182; 1963, c. 1166, s. 11; 1973, c. 108, s. 74; c. 476, s. 133; 1985, c. 589, s. 2.)

§ 122C-185. Application of funds belonging to State facilities.

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with the State Budget Act, Chapter 143C of the General Statutes.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77. (1899, c. 1, s. 34; Rev., s. 4552; C.S., s. 6167; 1963, c. 1166, s. 13; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 68.)

Editor's Note. — Session Laws 2006-203, s. 126, provides, in part: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 122C-186. General Assembly visitors of State facilities.

The members of the General Assembly are ex officio visitors of all State facilities, provided that the common law right of visitation of a State facility is abrogated to the extent that it does not include the right to access to confidential information. This right of access is only as granted by statute. (1963, c. 1184, s. 1; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

§§ 122C-187 through 122C-190: Reserved for future codification purposes.

Part 6. Quality Assurance.

§ 122C-191. Quality of services.

(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. The rules may provide that the Secretary has the authority to determine whether applicable standards of practice have been met.

(e) For purposes of peer review functions only:

(1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

(3) Peer review information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification function, including the Joint Commission on Accreditation of Healthcare Organizations. Information released under this subdivision shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this subsection, and the standards review organization shall keep the information confidential subject to this section. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1053, s. 1; 1998-212, s. 12.35C(d); 1999-222, s. 1; 2004-149, s. 2.7.)

Cross References. — As to provisions pertaining to medical review committees, see G.S. 131E-95.

§ 122C-192. Review and protection of information.

(a) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a patient or client, as needed to ensure quality assurance activities, the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of an area authority or State facility. The Secretary may also review the personnel records of employees of an area authority or State facility.

(b) An area authority, State facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning an area authority or State facility without that individual's consent.

Violation of this subsection is a Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).

(c) The Secretary shall adopt rules to ensure that unauthorized disclosure does not occur.

(d) All confidential or privileged information obtained under this section and the names of individuals providing such information are not public records under Chapter 132 of the General Statutes. (1985, c. 589, s. 2; 1993, c. 539, s. 926; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 122C-193: Reserved for future codification purposes.

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

§§ 122C-194 through 122C-200: Repealed by Session Laws 2000-67, s. 11.21(e), effective July 1, 2000.

ARTICLE 5.

Procedures for Admission and Discharge of Clients.

Part 1. General Provisions.

§ 122C-201. Declaration of policy.

It is State policy to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a 24-hour facility unless that individual is mentally ill or a substance abuser and dangerous to self or others. All admissions and commitments shall be accomplished under conditions that protect the dignity and constitutional rights of the individual.

It is further State policy that, except as provided in G.S. 122C-212(b), individuals who have been voluntarily admitted shall be discharged upon application and that involuntarily committed individuals shall be discharged as soon as a less restrictive mode of treatment is appropriate. (1973, c. 723, s. 1; c. 726, s. 1; c. 1084; c. 1408, s. 1; 1977, c. 400, s. 1; 1979, c. 915, ss. 2, 11; 1983, c. 638, s. 1; c. 864, s. 4; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For article on the result of the 1979 statutory changes in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 985 (1982).

For article on the attorney's role in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 1027 (1982).

For note discussing the overinclusive and underinclusive nature of the North Carolina involuntary civil commitment system, see 63 N.C.L. Rev. 241 (1984).

For article discussing involuntary commitment of the mentally disabled, see 14 N.C. Cent. L.J. 406 (1984).

For note on the duty to commit dangerous mental patients, see 66 N.C.L. Rev. 1311 (1988).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former statutory provisions.*

Constitutionality. — The statutory scheme for involuntary commitment is constitutional. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983); French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

The North Carolina General Assembly has enacted an excellent legislative scheme which adequately protects the interests of all who may be involved in an involuntary commitment proceeding. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983).

Public Policy to Prevent Unnecessary Commitments. — The policy of this State is to prevent the possibility that persons who are not mentally ill or inebriates and dangerous to themselves or others would be involuntarily committed. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Purpose of Involuntary Commitment Proceeding. — The primary purpose of an involuntary commitment proceeding is to protect the person who, after due process, has been found to be both mentally ill and imminently dangerous, by placing such a person in more protected environment where the danger may be minimized and his treatment facilitated; in a real sense the proceeding is an important step in his medical and psychiatric treatment. In re Farrow, 41 N.C. App. 680, 255 S.E.2d 777 (1979).

Two purposes for the involuntary commitment statute are (1) to allow temporary withdrawal from society of those who may be dangerous and (2) to provide treatment. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

An involuntary commitment proceeding is a proceeding of a civil nature which is governed by pertinent Rules of Civil Procedure. In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

Requirements for Entering Commitment Order. — To enter a commitment order, the trial court is required to ultimately find two distinct facts, i.e., that the respondent is mentally ill and is dangerous to himself or to others. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Requirement That Person Be Dangerous. — By requiring that the person be found dangerous to himself or others, the legislature has made it clear that involuntary commitment is not for all those who are mentally ill, or even for those whose mental illness may make it necessary for them to have custodial care. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Where doctor testified only that the respondent was unable to care for herself and that she was a complete nursing care problem, and there was no showing that the respondent was dangerous to herself, the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

Standard of Commitment for Minors. — Former Chapter 122 was written to provide constitutionally defensible procedural and evidentiary rules. To allow juvenile court judges to commit minors to mental institutions with a lesser standard than that set forth in former Chapter 122 would subject such commitments to constitutional challenge as a deprivation of liberty without due process of law. In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

Negligent Failure to Commit. — For case in which federal district court adopted a "psychotherapist judgment rule" in considering alleged negligent failure to have patient involuntarily committed, see Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986), aff'd, 836 F.2d 209 (4th Cir. 1987).

Jury Adequately Charged Regarding Procedures Under Acquittal on Grounds of Insanity. — Pattern jury instruction in N.C.P.I.-Crim. 304.10, which informed the jury of the commitment hearing procedures in G.S. 15A-1321 and 15A-1322 pursuant to this Article, adequately charged the jury regarding procedures under acquittal on the ground of insanity. State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — The opinions below were rendered under former statutory provisions.

A minor may be voluntarily admitted upon his request without application for admission by parent. See opinion of Attorney General to Dr. Lenore Behar, Chief, Children and Youth Services, Division of Mental Health Services, 44 N.C.A.G. 3 (1974).

There Is No Minimum Age Below Which a Person May Not Be Involuntarily Committed. — See opinion of Attorney General to Mr. R.G. Frye, Jr., 43 N.C.A.G. 161 (1973).

Eligible Veteran May Be Involuntarily Committed to Veterans' Administration Hospital. — See opinion of Attorney General to Mr. Hal H. Walker, 43 N.C.A.G. 60 (1973).

Judge May Commit Individual to Private Hospital Designated by Department. — A district court judge may involuntarily commit an individual to a private hospital for the mentally ill if that hospital has been designated or licensed by the Department of Human Resources. Opinion of Attorney General to Mr. Ben Sauber, Director of Advocate Program, Dorothea Dix Hospital, 47 N.C.A.G. 30 (1977).

§ 122C-202. Applicability of Article.

This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, mentally retarded, developmentally disabled, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities. (1985, c. 589, s. 2; 1989, c. 625, s. 20.)

CASE NOTES

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 122C-202.1. Hospital privileges.

Nothing in this Article related to admission, commitment, or treatment shall be deemed to mandate hospitals to grant or deny to any individuals privileges to practice in hospitals. (1985, c. 589, s. 2.)

§ 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.

The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded or developmentally disabled individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapter 35A or former Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2; 1989, c. 625, s. 21; 1989 (Reg. Sess., 1990), c. 1024, s. 26(b).)

§ 122C-204. Civil liability for corruptly attempting admission or commitment.

Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article. (1963, c. 1184, s. 1; 1985, c. 589, s. 2.)

§ 122C-205. Return of clients to 24-hour facilities.

(a) When a client of a 24-hour facility who:
(1) Has been involuntarily committed;
(2) Is being detained pending a judicial hearing;
(3) Has been voluntarily admitted but is a minor or incompetent adult;
(4) Has been placed on conditional release from the facility; or
(5) Has been involuntarily committed or voluntarily admitted and is the subject of a detainer placed with the 24-hour facility by an appropriate official

escapes or breaches a condition of his release, if applicable, the responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the appropriate law enforcement agency in the county where the facility is located, and the appropriate law enforcement agency in any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agency or agencies under the particular circumstances involved in order to assure the expeditious return of the client to the 24-hour facility involved and protect the general public.

(b) When a competent adult who has been voluntarily admitted to a 24-hour facility escapes or breaches a condition of his release, the responsible professional, in the exercise of accepted professional judgment, practice, and standards, will determine if it is reasonably foreseeable that:
(1) The client may cause physical harm to others or himself;
(2) The client may cause damage to property;
(3) The client may commit a felony or a violent misdemeanor; or
(4) That the health or safety of the client may be endangered

unless he is immediately returned to the facility. If the responsible professional finds that any or all of these occurrences are reasonably foreseeable, he will follow the same procedures as those set forth in subsection (a) of this section.

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in G.S. 122C-251 and G.S. 122C-408(b). Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Division of Criminal Information message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or entry into either the Division of Criminal Information System or National Crime Information System, or both, as appropriate.

(d) In the situations described in subsections (a) and (b) of this section, the responsible professional shall also notify or cause to be notified as soon as practicable:

(1) The next of kin of the client or legally responsible person for the client;
(2) The clerk of superior court of the county of commitment of the client;
(3) The area authority of the county of residence of the client, if appropriate;
(4) The physician or eligible psychologist who performed the first examination for a commitment of the client, if appropriate; and
(5) Any official who has placed a detainer on a client as described in subdivision (a)(5) of this section

of the escape or breach of condition of the client's release upon occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C.S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 12-14; 1987, c. 749, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Any Escaped Patient, Regardless of the Type of Commitment, Must Be Returned by the Sheriff. — See opinion of Attorney General to Lena Davis, Broughton Hospital, 41 N.C.A.G. 900 (1972), rendered under former statutory provisions.

§ 122C-205.1. Discharge of clients who escape or breach the condition of release.

(a) As described in G.S. 122C-205(a), when a client of a 24-hour facility escapes or breaches the condition of his release and does not return to the facility, the facility shall:

(1) If the client was admitted under Part 2 of this Article or under Parts 3 or 4 of this Article to a nonrestrictive facility, discharge the client based on the professional judgment of the responsible professional;
(2) If the client was admitted under Part 3 or Part 4 of this Article to a restrictive facility, discharge the client when the period for continued treatment, as specified by the court, expires;
(3) If the client was admitted pending a district court hearing under Part 7 of this Article, request that the court consider dismissal or continuance of the case at the initial district court hearing; or
(4) If the client was committed under Part 7 of this Article, discharge the client when the commitment expires.

(b) As described in G.S. 122C-205(a), when a client of a 24-hour facility who was admitted under Part 8 of this Article escapes or breaches the conditions of his release and does not return to the facility, the facility may discharge the client from the facility based on the professional judgment of the responsible professional and following consultation with the appropriate area authority or physician.

(c) Upon discharge of the client, the 24-hour facility shall notify all the persons directed to be notified of the client's escape or breach of conditional release under 122C-205(a), (b) and (d) that the client has been discharged.

(d) If the client is returned to the 24-hour facility subsequent to discharge from the facility, applicable admission or commitment procedures shall be followed, when appropriate. (1987, c. 674, s. 1.)

§ 122C-206. Transfers of clients between 24-hour facilities.

(a) Before transferring a voluntary adult client from one 24-hour facility to another, the responsible professional at the original facility shall: (i) get authorization from the receiving facility that the facility will admit the client; (ii) get consent from the client; and (iii) if consent to share information is granted by the client, notify the next of kin of the time and location of the transfer. The preceding requirements of this paragraph may be waived if the client has been admitted under emergency procedures to a State facility not serving the client's region of the State. Following an emergency admission, the client may be transferred to the appropriate State facility without consent according to the rules of the Commission.

(b) Before transferring a respondent held for a district court hearing or a committed respondent from one 24-hour facility to another, the responsible professional at the original facility shall:

(1) Obtain authorization from the receiving facility that the facility will admit the respondent; and

(2) Provide reasonable notice to the respondent, or legally responsible person, of the reason for the transfer and document the notice in the client's record.

No later that 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer is completed. If the transfer is completed before the judicial commitment hearing, these proceedings shall be initiated by the receiving facility.

(c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article, may be transferred from one 24-hour facility to another following the same procedures specified in subsection (b) of this section. In addition, the legally responsible person shall be consulted before the proposed transfer. If the transfer is completed before the judicial determination required in G.S. 122C-223 or G.S. 122C-232, these proceedings shall be initiated by the receiving facility.

(c1) If a client described in subsections (b) or (c) of this section is to be transferred from one 24-hour facility to another and transportation is needed, the responsible professional at the original facility shall notify the clerk of court or a magistrate, and the clerk of court or magistrate shall issue a custody order for transportation of the client as provided by G.S. 122C-251.

(d) Minors and incompetent adults, admitted pursuant to Part 5 of this Article, may be transferred from one 24-hour facility to another provided that prior to transfer the responsible professional at the original facility shall:

(1) Obtain authorization from the receiving facility that the facility will admit the client; and

(2) Provide reasonable notice to the client regarding the reason for transfer and document the notice in the client's record; and

(3) Provide reasonable notice to and consult with the legally responsible person regarding the reason for the transfer and document the notice and consultation in the client's record.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the legally responsible person that the transfer is completed.

(e) The responsible professional may transfer a client from one facility to another for emergency medical treatment, emergency medical evaluation, or emergency surgery without notice to or consent from the client. Within a reasonable period of time the responsible professional shall notify the next of kin or the legally responsible person of the client of the transfer.

(f) When a client is transferred to another facility solely for medical reasons, the client shall be returned to the original facility when the medical care is completed unless the responsible professionals at both facilities concur that discharge of the client who is not subject to G.S. 122C-266(b) is appropriate.

(g) The Commission may adopt rules to implement this section. (1919, c. 330; C.S., s. 6163; 1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 537, s. 9; c. 623, s. 1; 1953, c. 675, s. 15; 1955, c. 1274, s. 1; 1959, c. 1002, s. 11; 1963, c. 1166, ss. 10, 12; 1973, c. 475, s. 1; c. 476, s. 133; c. 673, ss. 7, 8; c. 1436, ss. 6, 7; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 328, ss. 1, 2; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 15; 1991, c. 704, s. 1.)

§ 122C-207. Confidentiality.

Court records made in all proceedings pursuant to this Article are confidential, and are not open to the general public except as provided for by G.S. 122C-54(d). (1977, c. 696, s. 1; 1979, c. 164, s. 2; c. 915, s. 20; 1985, c. 589, s. 2.)

Legal Periodicals. — For article on the result of the 1979 statutory changes in involuntary civil commitment in North Carolina, see 60 N.C.L. Rev. 985 (1982).

§ 122C-208. Voluntary admission not admissible in involuntary proceeding.

Except when considering treatment history as it pertains to an involuntary outpatient commitment, the fact that an individual has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. (1985, c. 589, s. 2.)

CASE NOTES

Harmless Error. — Evidence admitted in violation of former G.S. 122-56.6 was subject to the doctrine of harmless error. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

§ 122C-209. Voluntary admissions acceptance.

Nothing contained in Parts 2 through 5 of this Article requires a private physician or private facility to accept an individual as a client for examination or treatment. Examination or treatment at a private facility or by a private physician is at the expense of the individual to the extent that charges are not disposed of by contract between the area authority and private facility. (1985, c. 589, s. 2.)

§ 122C-210. Guardian to pay expenses out of estate.

It is the duty of the guardian who has legal custody of the estate of an incompetent individual held pursuant to the provisions of this Article in a facility to supply funds for his support in the facility during the stay as long as there are sufficient funds for that purpose over and beyond maintaining and supporting those individuals who may be legally dependent on the estate. (1985, c. 589, s. 2.)

§ 122C-210.1. Immunity from liability.

No facility or any of its officials, staff, or employees, or any physician or other individual who is responsible for the custody, examination, management, supervision, treatment, or release of a client and who follows accepted professional judgment, practice, and standards is civilly liable, personally or otherwise, for actions arising from these responsibilities or for actions of the client. This immunity is in addition to any other legal immunity from liability to which these facilities or individuals may be entitled and applies to actions performed in connection with, or arising out of, the admission or commitment of any individual pursuant to this Article. (1899, c. 1, s. 31; Rev., s. 4560; C.S., s. 6172; 1961, c. 511, s. 1; 1973, c. 673, s. 10; 1983, c. 638, s. 15; c. 864, s. 4; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Exercise of Professional Judgment. — Adopting the standard enunciated in Youngberg v. Romeo, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982), the court held that so long as the requisite procedures were followed, and the decision to restrain plaintiff, a voluntarily admitted patient at a state mental hospital, was an exercise of professional judgment, the defendants were not liable to the plaintiff for their actions. Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

Failure to Seek Involuntary Commitment of Patient. — The statutory immunity given by this section makes it most unlikely that the North Carolina Supreme Court would hold that North Carolina's public policy and its tort law would impose tort liabilities upon psychiatrists at Veterans Administration hospital for a mistake in not seeking involuntary commitment of a patient. Currie v. United States, 836 F.2d 209 (4th Cir. 1987).

Plaintiff Must Allege Gross or Intentional Negligence or Immunity Will Preclude Claim. — Absent allegation of gross or intentional negligence, plaintiffs' claims of negligence on part of health care providers at Veteran's Administration facility were precluded by statutory immunity. Cantrell v. United States, 735 F. Supp. 670 (E.D.N.C. 1988).

Because there was a question of fact as to whether defendant rehabilitation center and its chief operating officer followed the applicable standard of care, they were not entitled to qualified immunity under G.S. 122C-210.1 on plaintiff's wrongful death claims as a matter of law; plaintiff alleged facts that defendants had violated accepted professional judgment, practice and standards, an investigative report from the North Carolina Division of Facility Services found that the facility had failed to adequately supervise plaintiff's brother, and plaintiff's complaint was certified by an expert under N.C. R. Civ. P. 9(j) that the medical care outlined in the complaint did not comply with the applicable standard of care. Snyder v. Learning Servs. Corp., 187 N.C. App. 480, 653 S.E.2d 548, 2007 N.C. App. LEXIS 2454 (2007).

Liability for Wrongful Acts of Discharged Patient. — The directors and superintendent of a hospital for the insane acting under former statutory provisions in discharging or releasing a patient therefrom could not be held responsible in damages for the subsequent killing by such patient of another under a charge of negligence. Bollinger v. Rader, 151 N.C. 383, 66 S.E. 314 (1909).

Cited in Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986); Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 122C-210.2. Research at State facilities for the mentally ill.

(a) For research purposes, State facilities for the mentally ill may be designated by the Secretary as facilities for the voluntary admission of adults who are not admissible as clients otherwise. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of those admitted for research purposes.

(b) Individuals may be admitted to such designated facilities on either an outpatient or inpatient basis.

(c) The Human Rights Committee of the designated facility shall monitor the care of individuals admitted for research during their participation in any research program.

(d) For these individuals admitted to such designated facilities for research purposes only, the following provisions shall apply:

1. A written application for admission pursuant to G.S. 122C-211(a) and an examination by a physician within 24 hours of admission shall be provided to each of these individuals;
2. They shall be exempt from the provisions of G.S. 122C-57(a) governing the rights to treatment and to a treatment plan; the requirements of G.S. 122C-61(2) and G.S. 122C-212(b); and the requirements of any single portal of entry and exit plan; however, nothing in this section shall take away the individual's right to be informed of the potential risks and alleged benefits of their participation in any research program;
3. The Secretary shall exempt these individuals from the provisions of Article 7 of Chapter 143 of the General Statutes requiring payment for treatment in a State institution. The Secretary may also authorize reasonable compensation to be paid to individuals participating in research projects for their services; provided, that the compensation is paid from research grant funds; and
4. The Commission shall adopt rules regarding the admission, care and discharge of those individuals admitted for research purposes only. (1987, c. 358, s. 1.)

Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-211. Admissions.

(a) Except as provided in subsections (b) through (f1) of this section, any individual, including a parent in a family unit, in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client.

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that the applicant may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that the individual will receive treatment for more than 30 days or shall produce a current, valid physical examination report, signed by a physician, completed within 12 months prior to the current admission. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, the individual may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

(f) A family unit may voluntarily seek admission to a 24-hour substance abuse facility that is able to provide, directly or by contract, treatment, habilitation, or rehabilitation services that will specifically address the family unit's needs. These services shall include gender-specific substance abuse treatment, habilitation, or rehabilitation for the parent as well as assessment, well-child care, and, as needed, early intervention services for the child. A family unit that voluntarily seeks admission to a 24-hour substance abuse facility shall be evaluated by the facility to determine whether the family unit would benefit from the services of the facility. A facility shall not accept a family unit as a client if the facility determines that the family unit does not need or cannot benefit from the care, habilitation, or rehabilitation available at the facility. The facility shall give to a family unit that is denied admission a referral to another facility or facilities that may be able to provide treatment needed by the family unit. Except as otherwise provided, this section applies to a parent in a family unit seeking admission under this section.

(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable.

(g) As used in this Part, the term "family unit" means a parent and the parent's dependent children under the age of three years. (1945, c. 952, s. 471/2; 1963, c. 1184, s. 22; 1973, c. 723, s. 1; c. 1084; 1983, c. 383, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 16; 1989, c. 287; 1998-47, s. 1(a); 1998-198, s. 6; 1998-217, s. 53(a)(1), (2); 1999-456, s. 5.)

Editor's Note. — Session Laws 1998-47, s. 1, which amended this section, was effective retroactively to October 1, 1997.

Legal Periodicals. — For article, "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

CASE NOTES

Standard of Care Due Prospective Clients. — While voluntary written policies and procedures do not themselves establish a per se standard of due care appropriate to prospective clients, they represent some evidence of a reasonably prudent standard of care. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

Duty to Refer to Another Facility. — This section imposes on a facility the duty to refer an individual to another facility for treatment; therefore, the facility must necessarily use due care in exercising its judgment not to refer an individual for further treatment. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

Shift supervisor of treatment center was required to use due care in deciding whether or not to refer plaintiff for further aid when his friend brought him to the center unconscious and notified the shift supervisor of his drug overdose. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

Control Not Conferred by Voluntary Commitment. — Voluntary commitment to treatment facility by veteran for severe post traumatic stress disorder would not have conferred control over him. Cantrell v. United States, 735 F. Supp. 670 (E.D.N.C. 1988).

OPINIONS OF ATTORNEY GENERAL

Voluntarily Admitted Patient May Be Involuntarily Returned After Escape. — See opinion of Attorney General to Mr. R.J. Bickel, Division of Mental Health Services, Department of Human Resources, 44 N.C.A.G. 52 (1974), rendered under former statutory provisions.

§ 122C-212. Discharges.

(a) Except as provided in subsections (b) and (c) of this section, an individual who has been voluntarily admitted to a facility shall be discharged upon his own request. A request for discharge from a 24-hour facility shall be in writing.

(b) An individual who has been voluntarily admitted to a 24-hour facility may be held for 72 hours after his written application for discharge is submitted.

(c) When an individual from a single portal area who has been voluntarily admitted to an area or State 24-hour facility is discharged, the discharge shall follow the procedures as prescribed in the area plan. (1973, c. 723, s. 1; c. 1084; 1983, c. 383, s. 4; 1985, c. 589, s. 2.)

Legal Periodicals. — For note, "The Duty to Control in Negligent Release Cases: King v. Durham County Mental Health Developmental Disabilities and Substance Abuse Authority," see 21 N.C. Cent. L.J. 379 (1995).

CASE NOTES

Control Not Conferred by Voluntary Commitment. — Voluntary commitment to treatment facility by veteran for severe post traumatic stress disorder would not have conferred control over him. Cantrell v. United States, 735 F. Supp. 670 (E.D.N.C. 1988).

§§ 122C-213 through 122C-220: Reserved for future codification purposes.

Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-221. Admissions.

(a) Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. Except as otherwise provided in this Part, the provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for the minor. If a minor reaches the age of 18 while in treatment under this Part, further treatment is authorized only on the written authorization of the client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter.

(b) The Commission shall adopt rules governing procedures for admission to 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or improperly remains in a 24-hour facility. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370 rewrote this Part. Where appropriate, the historical citations to the sections in the Part as originally enacted have been added to corresponding sections in the rewritten Part.

CASE NOTES

Minor is entitled to protection of due process procedures. In re Long, 25 N.C. App. 702, 214 S.E.2d 626, cert. denied, 288 N.C. 241, 217 S.E.2d 665 (1975), decided under former statutory procedures.

The admission procedure under former Chapter 122 was permissible. The judicial deference afforded to parental authority, along with the parent's interest in being able to seek immediate treatment and the policy of encouraging voluntary admissions, would outweigh any interest the minor might have in a preadmission hearing. However, the continued confinement of a minor based on that procedure would require procedural safeguards consistent with the due process clause. Such procedural due process should be afforded at the earliest possible time after admission. In re Long, 25 N.C. App. 702, 214 S.E.2d 626, cert. denied, 288 N.C. 241, 217 S.E.2d 665 (1975).

Cited in In re Lynette H., 323 N.C. 598, 374 S.E.2d 272 (1988); In re Phillips, 99 N.C. App. 159, 392 S.E.2d 407 (1990).

§ 122C-222. Admissions to State facilities.

Admission of a minor who is a resident of a county that is not in a single portal area shall be made to a State facility following screening and upon referral by an area authority, a physician, or an eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the person making the referral. (1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370 rewrote this section, which formerly related to emergency admission to a 24-hour facility. As to emergency admission to a 24-hour facility, see now G.S. 122C-223.

§ 122C-223. Emergency admission to a 24-hour facility.

(a) In an emergency situation, when the legally responsible person does not appear with the minor to apply for admission, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application. The application shall serve as the initiating document for the hearing required by G.S. 122C-224.

(b) Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to an inability to identify, to locate, or to contact him after all reasonable means to establish contact have been attempted.

(c) If the legally responsible person cannot be located within 72 hours of admission, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 3 of Chapter 7B of the General Statutes in either the minor's county of residence or in the county in which the facility is located.

(d) Within 24 hours of an emergency admission to a State facility, the State facility shall notify the area authority and, as appropriate, the minor's physician or eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the appropriate person in the community. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1; 1998-202, s. 13(ff).)

Editor's Note. — Session Laws 1987, c. 370 rewrote this section, which formerly related to judicial determinations. As to judicial review of voluntary admissions, see now G.S. 122C-224. Former G.S. 122C-222 related to emergency admission to a 24-hour facility.

Legal Periodicals. — For article, "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

CASE NOTES

Cited in In re Lynette H., 323 N.C. 598, 374 S.E.2d 272 (1988).

OPINIONS OF ATTORNEY GENERAL

The post-admission procedures specified by former § 122-56.7 did not violate the right to privacy of a voluntarily admitted minor or incompetent person. Opinion of Attorney General to Mr. John L. Pinnix, 20 August 1975.

Following Admission of Minor Child to Treatment Facility Only Court or Facility May Release Minor. — Pursuant to the provisions of former G.S. 122-56.7, parents who applied for admission of their minor child to a treatment facility could not later obtain a discharge of the child prior to judicial determination of the need for further treatment at the treatment facility. Only the court or the treatment facility could release the minor child and only then upon determination that the child did not need further hospitalization. See opinion of

Attorney General to Mary B. Chamblee, Assistant Public Defender, 26th Judicial District, 49 N.C.A.G. 166 (1980).

§ 122C-224. Judicial review of voluntary admission.

(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held by the district court in the county in which the 24-hour facility is located within 15 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted.

(b) Before the admission, the facility shall provide the minor and his legally responsible person with written information describing the procedures for court review of the admission and informing them about the discharge procedures. They shall also be informed that, after a written request for discharge, the facility may hold the minor for 72 hours during which time the facility may apply for a petition for involuntary commitment.

(c) Within 24 hours after admission, the facility shall notify the clerk of court in the county where the facility is located that the minor has been admitted and that a hearing for concurrence in the admission must be scheduled. At the time notice is given to schedule a hearing, the facility shall notify the clerk of the names and addresses of the legally responsible person and the responsible professional. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

Editor's Note. — Session Laws 1987, c. 370 rewrote this section, which formerly related to discharges. As to discharges, see now G.S. 122C-224.7. Former G.S. 122C-223 related to judicial determinations.

CASE NOTES

Cited in In re Phillips, 99 N.C. App. 159, 392 S.E.2d 407 (1990).

§ 122C-224.1. Duties of clerk of court.

(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, an attorney shall be appointed for the minor in accordance with rules adopted by the Office of Indigent Defense Services. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part. (1987, c. 370, s. 1; 2000-144, s. 37.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

OPINIONS OF ATTORNEY GENERAL

Protection of Child's Rights. — Although a minor cannot obtain legal representation without the consent of the legally responsible person, the rights of the child can be adequately protected. First, the Department of Social Services can conduct an investigation of the legally responsible person pursuant to G.S. 7A-542 et seq. [see now G.S. 7B-300 et seq.], the guardian ad litem program can provide additional support for abused, neglected, or dependent juveniles, including legal support and, a minor receives representation for the commitment proceedings by virtue of this section and G.S. 122C-270. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

§ 122C-224.2. Duties of the attorney for the minor.

(a) The attorney shall meet with the minor within 10 days of his appointment but not later than 48 hours before the hearing. In addition, the attorney shall inform the minor of the scheduled hearing and shall give the minor a copy of the notice of the time and place of the hearing no later than 48 hours before the hearing.

(b) The attorney shall counsel the minor concerning the hearing procedure and the potential effects of the hearing proceeding on the minor. If the minor does not wish to appear, the attorney shall file a motion with the court before the scheduled hearing to waive the minor's right to be present at the hearing procedure except during the minor's own testimony. If the attorney determines that the minor does not wish to appear before the judge to provide his own testimony, the attorney shall file a separate motion with the court before the hearing to waive the minor's right to testify.

(c) In all actions on behalf of the minor, the attorney shall represent the minor until formally relieved of the responsibility by the judge. (1987, c. 370, s. 1.)

§ 122C-224.3. Hearing for review of admission.

(a) Hearings shall be held at the 24-hour facility in which the minor is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, unless the judge determines that the court calendar will be disrupted by such scheduling. In cases where the hearing cannot be held in the 24-hour facility, the judge may schedule the hearing in another location, including the judge's chambers. The hearing may not be held in a regular courtroom, over objection of the minor's attorney, if in the discretion of the judge a more suitable place is available.

(b) The minor shall have the right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney.

(c) Certified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence, but the minor's right, through his attorney, to confront and cross-examine witnesses may not be denied.

(d) Hearings shall be closed to the public unless the attorney requests otherwise.

(e) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the attorney, on request, by the clerk upon the direction of a district court judge. The copies shall be provided at State expense.

(f) For an admission to be authorized beyond the hearing, the minor must be (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted. Further treatment at the admitting facility should be undertaken only when lesser measures will be insufficient. It is not necessary that the judge make a finding of dangerousness in order to support a concurrence in the admission.

(g) The court shall make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the requirements of subsection (f) have been met, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or

(2) If the court determines that there exist reasonable grounds to believe that the requirements of subsection (f) have been met but that additional diagnosis and evaluation is needed before the court can concur in the admission, the court may make a one time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted; or

(3) If the court determines that the conditions for concurrence or continued diagnosis and evaluation have not been met, the judge shall order that the minor be released.

(h) The decision of the District Court in all hearings and rehearings is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. The minor may be retained and treated in accordance with this Part, pending the outcome of the appeal, unless otherwise ordered by the District Court or the Court of Appeals. (1987, c. 370, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 113.)

CASE NOTES

Cited in WSOC Television, Inc. v. State ex rel. Att'y Gen., 107 N.C. App. 448, 420 S.E.2d 682 (1992).

§ 122C-224.4. Rehearings.

(a) A minor admitted to a 24-hour facility upon order of the court for further diagnosis and evaluation shall have the right to a rehearing if the responsible professional determines that the minor is in need of further treatment beyond the time authorized by the court for diagnosis and evaluation.

(b) A minor admitted to a 24-hour facility upon the concurrence of the court shall have the right to a rehearing for further concurrence in continued treatment before the end of the period authorized by the court. The court shall review the continued admission in accordance with the hearing procedures in this Part. The court may order discharge of the minor if the minor no longer meets the criteria for admission. If the minor continues to meet the criteria for admission the court shall concur with the continued admission of the minor and set the length of the authorized admission for a period not to exceed 180 days. Subsequent rehearings shall be scheduled at the end of each subsequent authorized treatment period, but no longer than every 180 days.

(c) The responsible professional shall notify the clerk, no later than 15 days before the end of the authorized admission, that continued stay beyond the authorized admission is recommended for the minor. The clerk shall calendar the rehearing to be held before the end of the current authorized admission. (1987, c. 370, s. 1.)

§ 122C-224.5. Transportation.

When it is necessary for a minor to be transported to a location other than the treating facility for the purpose of a hearing, transportation shall be provided under the provisions of G.S. 122C-251. However, the 24-hour facility may obtain permission from the court to routinely provide transportation of minors to and from hearings. (1987, c. 370, s. 1.)

§ 122C-224.6. Treatment pending hearing and after authorization for or concurrence in admission.

(a) Pending the initial hearing and after authorization for further diagnosis and evaluation, or concurrence in admission, the responsible professional may administer to the minor reasonable and appropriate medication and treatment that is consistent with accepted medical standards and consistent with Article 3 of this Chapter.

(b) The responsible professional may release the minor conditionally for periods not in excess of 30 days on specified appropriate conditions. Violation of the conditions is grounds for return of the minor to the 24-hour facility. A law enforcement officer, on request of the responsible professional, shall take the minor into custody and return him to the facility in accordance with G.S. 122C-205. (1987, c. 370, s. 1.)

§ 122C-224.7. Discharge.

(a) The responsible professional shall unconditionally discharge a minor from treatment at any time that it is determined that the minor is no longer mentally ill or a substance abuser, or no longer in need of treatment at the facility.

(b) The legally responsible person may file a written request for discharge from the facility at any time. The facility may hold the minor in the facility for 72 hours after receipt of the request for discharge. If the responsible professional believes that the minor is mentally ill and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 7 of this Article. If the responsible professional believes that the minor is a substance abuser and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 8 of this Article. If an order authorizing the holding of the minor under involuntary commitment procedures is issued, further treatment and holding shall follow the provisions of Part 7 or Part 8 whichever is applicable. If an order authorizing the holding of the minor under involuntary commitment procedures is not issued, the minor shall be discharged.

(c) If a client reaches age 18 while in treatment, and the client refuses to sign an authorization for continued treatment within 72 hours of reaching 18, he shall be discharged unless the responsible professional obtains an order to hold the client under the provisions of Part 7 or Part 8 of this Article pursuant to an involuntary commitment. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

§§ 122C-225 through 122C-230: Reserved for future codification purposes.

Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for the Mentally Ill and Substance Abusers.

§ 122C-231. Admissions.

Except as otherwise provided in this Part an incompetent adult may be admitted to a facility when the individual is mentally ill or a substance abuser and in need of treatment. The provisions of G.S. 122C-211 shall apply to admissions of an incompetent adult under this Part except that the legally responsible person shall act for the individual, in applying for admission to a facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2.)

§ 122C-232. Judicial determination.

(a) When an incompetent adult is admitted to a 24-hour facility where the incompetent adult will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the incompetent adult is admitted to the facility. A continuance of not more than five days may be granted upon motion of:

(1) The court;
(2) Respondent's counsel; or
(3) The responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted; these rules shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the incompetent adult is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the incompetent adult. If the court finds that these requirements have not been met, it shall order that the incompetent adult be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent incompetent adults, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(d) In addition to the notice of hearings and rehearings to the incompetent adult and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person, or his successor. The legally responsible person, or his successor may also file with the clerk of court a written waiver of his right to receive notice. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

CASE NOTES

Before a court can concur with a voluntary commitment for an incompetent, it must find that the incompetent is mentally ill or an inebriate and is in need of further treatment at the treatment facility. In re Hiatt, 45 N.C. App. 318, 262 S.E.2d 685 (1980), decided under former statutory provisions.

OPINIONS OF ATTORNEY GENERAL

The post-admission procedures specified by former § 122-56.7 did not violate the right to privacy of a voluntarily admitted minor or incompetent person. Opinion of Attorney General to Mr. John L. Pinnix, 20 August 1975.

§ 122C-233. Discharges.

(a) Except as provided in subsection (b) of this section, an incompetent adult shall be discharged upon the request of the legally responsible person as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of an incompetent adult to a 24-hour facility as provided in G.S. 122C-232, only the facility or the court may release the incompetent adult at any time when either determines that the incompetent adult does not need further treatment at the facility. If the legally responsible person believes that release is in the best interest of the incompetent adult, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2.)

§§ 122C-234 through 122C-240: Reserved for future codification purposes.

Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities for Individuals with Developmental Disabilities.

§ 122C-241. Admissions.

(a) Except as provided in subsection (c) of this section an individual with developmental disabilities may be admitted to a facility for the developmentally disabled in order that he receive care, habilitation, rehabilitation, training, or treatment. Application for admission is made as follows:

(1) A minor with developmental disabilities may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent or parents having custody or by the legally responsible person.

(2) An adult with developmental disabilities who has been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.

(3) An adult with developmental disabilities who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) Prior to admission to a 24-hour facility, the individual shall be examined and evaluated by a physician or psychologist to determine whether the individual is developmentally disabled. In addition, the individual shall be examined and evaluated by a qualified developmental disabilities professional no sooner than 31 days prior to admission or within 72 hours after admission to determine whether the individual is in need of care, habilitation, rehabilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan. (1963, c. 1184, s. 6; 1965, c. 800, s. 12; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 383, s. 7; 1985, c. 589, s. 2; c. 695, s. 14; 1989, c. 625, s. 22; 1989 (Reg. Sess., 1990), c. 1024, s. 26(d).)

§ 122C-242. Discharges.

(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with developmental disabilities are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility.

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapter 35A of the General Statutes.

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24-hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan. (1963, c. 1184, s. 6; 1973, c. 476, s. 133; 1983, c. 383, s. 8; 1985, c. 589, s. 2; 1989, c. 625, s. 22; 1989 (Reg. Sess., 1990), c. 1024, s. 26(c).)

§§ 122C-243 through 122C-250: Reserved for future codification purposes.

Part 6. Involuntary Commitment — General Provisions.

§ 122C-251. Transportation.

(a) Except as provided in subsections (f) and (g), transportation of a respondent within a county under the involuntary commitment proceedings of this Article, including admission and discharge, shall be provided by the city or county. The city has the duty to provide transportation of a respondent who is a resident of the city or who is taken into custody in the city limits. The county has the duty to provide transportation for a respondent who resides in the county outside city limits or who is taken into custody outside of city limits. However, cities and counties may contract with each other to provide transportation.

(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(c) Transportation of a respondent may be by city- or county-owned vehicles or by private vehicle by contract with the city or county. To the extent feasible, law enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles. Further, law enforcement officers, to the extent possible, shall advise respondents when taking them into custody that they are not under arrest and have not committed a crime, but are being transported to receive treatment and for their own safety and that of others.

(d) In providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent.

(e) In providing transportation required by this section, the law-enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a clerk, a magistrate, or a district court judge, where applicable, may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing this transportation.

(g) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law-enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the respondent's support a reasonable notice and opportunity to object to the reimbursement, the county of residence of the respondent may recover that cost from:

(1) The respondent, if the respondent is not indigent;
(2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;
(3) Any person or entity that is contractually responsible for the cost; or
(4) Any person or entity that otherwise is liable under federal, State, or local law for the cost. (1899, c. 1, s. 32; Rev., s. 4555; 1919, c. 326, s. 4; C.S., ss. 6201, 6202; 1945, c. 952, ss. 29, 30; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1; 1969, c. 982; 1973, c. 1408, s. 1; 1979, c. 915, ss. 21, 22; 1983, c. 138, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 268; 1995 (Reg. Sess., 1996), c. 739, s. 4; 1999-201, s. 1; 1999-456, s. 36.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

CASE NOTES

Cited in State v. Fields, 324 N.C. 204, 376 S.E.2d 740 (1989).

OPINIONS OF ATTORNEY GENERAL

Former § 122-58.14 (see now this section) required a city to provide the transportation necessary to take a resident of the city who was being processed for involuntary commitment to a community mental health facility which was located outside of the city but inside of the same county. Opinion of Attorney General to Mr. W.B. Trevorrow, 7 October 1975.

§ 122C-252. Twenty-four hour facilities for custody and treatment of involuntary clients.

State facilities, 24-hour facilities licensed under this Chapter or hospitals licensed under Chapter 131E may be designated by the Secretary as facilities for the custody and treatment of involuntary clients. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public. Facilities so designated may detain a client under the procedures of Parts 7 and 8 of this Article both before a district court hearing and after commitment of the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2.)

§ 122C-253. Fees under commitment order.

Nothing contained in Parts 6, 7, or 8 of this Article requires a private physician, private psychologist, or private facility to accept a respondent as a client either before or after commitment. Treatment at a private facility or by a private physician or private psychologist is at the expense of the respondent to the extent that the charges are not disposed of by contract between the area authority and the private facility. An area authority and its contract agencies shall set and recover fees for inpatient or outpatient treatment services provided under a commitment order in accordance with G.S. 122C-146. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 3.)

§ 122C-254. Housing responsibility for certain clients in or escapees from involuntary commitment.

(a) Any individual who has been involuntarily committed under the provisions of this Article to a 24-hour facility:

(1) Who escapes from or is absent without authorization from the facility before being discharged; and

(2) Who is charged with a criminal offense committed after the escape or during the unauthorized absence; and

(3) Whose involuntary commitment is determined to be still valid by the judge or judicial officer who would make the pretrial release determination regarding the criminal offense under the provisions of G.S. 15A-533 and G.S. 15A-534; or

(4) Who is charged with committing a crime while still residing in the facility and whose commitment is still valid as prescribed by subdivision (3) of this section;

shall be denied pretrial release pursuant to G.S. 15A-533 and G.S. 15A-534. In lieu of pretrial release, and pending the additional proceedings on the criminal offense, the individual shall be returned to the 24-hour facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his commitment.

(b) Absent findings of lack of mental responsibility for his criminal offense or lack of competency to stand trial for the criminal offense, the involuntary commitment of an individual as described in subsection (a) of this section shall not be utilized in lieu of nor shall it constitute a bar to proceeding to trial for the criminal offense. At any time that the district court or the responsible professional of the 24-hour facility finds that the individual should be unconditionally discharged, committed for outpatient treatment, or conditionally released, the facility shall notify the clerk of superior court in the county in which the criminal charge is pending before making the change in status. At this time, a pretrial release determination pursuant to the provisions of G.S. 15A-533 and G.S. 15A-534 shall be made. In this event, arrangements for returning the individual for the pretrial release determination shall be the responsibility of the clerk of superior court.

(c) An individual who has been processed in accordance with subsections (a) and (b) of this section may not later be returned to a 24-hour facility before trial except pursuant to involuntary commitment proceedings by the district court in accordance with Parts 7 and 8 of this Article or after proceedings in accordance with the provisions of G.S. 15A-1002 or G.S. 15A-1321.

(d) Other involuntarily committed respondents who escape, but do not meet the additional criteria specified in subsection (a) of this section, are handled in accordance with the provisions of G.S. 122C-205. (1981, c. 936, s. 1; 1985, c. 589, s. 2.)

§§ 122C-255 through 122C-260: Reserved for future codification purposes.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

(a) Anyone who has knowledge of an individual who is mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk or magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

(c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with G.S. 122C-263(d)(2). If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

(1) Persons described in G.S. 122C-266(b);
(2) Persons admitted pursuant to G.S. 15A-1321;
(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and

(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 1985 (Reg. Sess., 1986), c. 863, s. 17; 1989 (Reg. Sess., 1990), c. 823, ss. 1, 2; c. 1024, s. 27.1; 1991, c. 37, s. 7; 1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47; 2004-23, s. 1(a); 2005-135, s. 1; 2009-315, s. 1; 2009-340, s. 1.)

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Editor's note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Effect of Amendments. — Session Laws 2009-315, s. 1, effective July 17, 2009, added the eighth sentence of subsection (d).

Session Laws 2009-340, s. 1, effective October 1, 2009, in subsection (d), added the proviso at the end of the ninth sentence, and deleted "However" from the beginning of the next-to-last sentence.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

For comment, "Senate Bill 43: A Refinement of North Carolina's Involuntary Civil Commitment Procedures," see 14 Campbell L. Rev. 105 (1992).

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under former statutory provisions.*

Common Law. — At common law there was a right to detain a mentally ill person in order to protect such person from self-injury and the public from injury at the hands of such deranged person. This doubtless accounts for the action of the legislature in authorizing such an emergency commitment. The action of the legislature supplanted the common-law rule. Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970), cert. denied, 277 N.C. 458, 178 S.E.2d 225 (1971).

Right to trial by jury did not exist at common law in insanity proceedings and was thus not required under former G.S. 122-58.3. In re Appeal of Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975).

A commitment order is essentially a judgment by which a person is deprived of his liberty, and as a result, he is entitled to the safeguard of a determination by a neutral officer of the court that reasonable grounds exist for his original detention, just as he would be if he were to be deprived of liberty in a criminal context. In re Reed, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

Requirements of former § 122-58.3 (see now §§ 122C-261 and 122C-281) were required to be followed diligently. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980); In re Barnhill, 72 N.C. App. 530, 325 S.E.2d 308 (1985).

Contents and Sufficiency of Affidavit. — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

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which was not confirmed by oath or affirmation before a duly authorized certifying officer did not comply with the requirements of former G.S. 122-58.3(a) (see now G.S. 122C-261, 122C-281) and could not serve as a basis for involuntary commitment. In re Ingram, 74 N.C. App. 579, 328 S.E.2d 588 (1985).

Insufficient Affidavit. — An affidavit which stated that the respondent was "believed to have been on drugs for a number of years," was "so mixed up," and was "at a place where he is dangerous to himself" was insufficient to establish reasonable grounds for the issuance of a custody order. In re Reed, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

Statement Held Not to Establish Grounds for Commitment. — Statement that "respondent has strange behavior and irrational in her thinking" was not a statement of fact but a pure conclusion of the affiant, and did not suffice to establish reasonable grounds for issuance of commitment order. In re Ingram, 74 N.C. App. 579, 328 S.E.2d 588 (1985).

Statement Held Not to Establish Mental Illness or Dangerousness. — Statements that respondent "Leaves home and no one knows of her whereabouts, and at times spends the night away from home. Accuses husband of improprieties" did not establish facts showing or tending to show that respondent was mentally ill or dangerous to herself or others. In re Ingram, 74 N.C. App. 579, 328 S.E.2d 588 (1985).

Effect of § 8-53. — For discussion of former statutory provisions making it manifest that the physician's role in involuntary commitment proceedings was not intended to be inhibited by G.S. 8-53, see In re Farrow, 41 N.C. App. 680, 255 S.E.2d 777 (1979).

Defenses of Insanity and Unconsciousness Distinguished. — The defenses of insanity and unconsciousness are not the same; a defendant found not guilty by reason of unconsciousness, as distinct from insanity, is not subject to commitment to a hospital for the mentally ill; however, such a defendant is subject to involuntary commitment to a facility for the mentally ill if found in a civil commitment proceeding to be mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness. State v. Fields, 324 N.C. 204, 376 S.E.2d 740 (1989).

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

Applied in Gregory v. Kilbride, 150 N.C. App. 601, 565 S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002).

Cited in State v. Coppage, 94 N.C. App. 630, 381 S.E.2d 169 (1989); Kwan-Sa You v. Roe, 97 N.C. App. 1, 387 S.E.2d 188 (1990); State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990); In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994); In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

§ 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

(a) Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible psychologist in accordance with G.S. 122C-263(c).

(b) Upon examination by the physician or eligible psychologist, if the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization. If the physician or eligible psychologist knows or has reason to believe that the individual is mentally retarded, the certificate shall so state.

(c) If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours, excluding Saturday, Sunday, and holidays, of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

(d) Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of this action. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

(1) Persons described in G.S. 122C-266(b);
(2) Persons admitted pursuant to G.S. 15A-1321;
(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

(e) Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the district court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as for all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 7.)

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Editor's note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Former § 122-58.18 (see now §§ 122C-262 and 122C-282) was not intended to be used indiscriminately and clearly defined the limited time and circumstances for such use. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980), decided under former statutory provisions.

Affidavit. — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980), decided under former statutory provisions.

Reliance on Information Gained from Others. — An officer's petition for involuntary commitment of respondent pursuant to the emergency procedures for violent persons was not required to be dismissed because the officer did not personally observe the respondent in an act of violence but relied on information gained from others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980), decided under former statutory provisions.

Defendant required immediate hospitalization to prevent harm to himself, pursuant to this section, evidenced by the testimony that when appellant abruptly left the doctor's office, he said he was going to kill himself. In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

No Overt Act Required. — In finding one to be imminently dangerous, there is no requirement of an overt act. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980), decided under former statutory provisions.

Concealing a potentially dangerous weapon is evidence of imminent danger. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980), decided under former statutory provisions.

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

Constitutional Protection Not Affected. — While this section provides permission and procedures to transport those subject to inpatient commitment who require immediate hospitalization to prevent harm, this section does not and cannot lessen the protection provided the mentally ill, or suspected mentally ill, by the Fourth Amendment. White v. Town of Chapel Hill, 899 F. Supp. 1428 (M.D.N.C. 1995), aff'd 70 F.3d 1264 (4th Cir. 1995).

Illustrative Case. — Where police had been called to plaintiff's apartment in relation to a "hostage situation", plaintiff's journal notes referenced killing himself and others, and plaintiff refused to come out of his house, police had probable cause under this section to surround plaintiff's home, ask him to come out, and seize him upon his voluntary exit. White v. Town of Chapel Hill, 899 F. Supp. 1428 (M.D.N.C. 1995), aff'd 70 F.3d 1264 (4th Cir. 1995).

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(a) Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, the person designated to provide transportation shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. When the examination set forth in subsection (a) of this section is performed by a physician or eligible psychologist the respondent may either be in the physical face-to-face presence of the physician or eligible psychologist or may be examined utilizing telemedicine equipment and procedures. A physician or eligible psychologist who examines a respondent by means of telemedicine must be satisfied to a reasonable medical certainty that the determinations made in accordance with subsection (d) of this section would not be different if the examination had been done in the physical presence of the physician or eligible psychologist. A physician or eligible psychologist who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in the physical presence of a person authorized to perform examinations under this section. As used in this subsection, "telemedicine" is the use of two-way real-time interactive audio and video between places of lesser and greater medical capability or expertise to provide and support health care when distance separates participants who are in different geographical locations. A recipient is referred by one provider to receive the services of another provider via telemedicine.

The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous mental illness and mental retardation including, if available, previous treatment history;

(2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;

(3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and

(4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

(1) If the physician or eligible psychologist finds that:
   a. The respondent is mentally ill;
   b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
   c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
   d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody.

(2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at anytime that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

a. Persons described in G.S. 122C-266(b);
b. Persons admitted pursuant to G.S. 15A-1321;
c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to

non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and

d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

(3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. The physician or eligible psychologist shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the examining physician or eligible psychologist, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician or eligible psychologist before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center.

(g) The physician or eligible psychologist, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, s. 3; 1989, c. 225, s. 2; c. 770, s. 74; 1989 (Reg. Sess., 1990), c. 823, ss. 3, 4; 1991, c. 37, s. 8; c. 636, s. 2(1); c. 761, s. 49; 1995 (Reg. Sess., 1996), c. 739, s. 8(a)-(d); 2009-315, s. 2; 2009-340, s. 2.)

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006 2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006 2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Editor's note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Effect of Amendments. — Session Laws

2009-315, s. 2, effective July 17, 2009, added the second through last sentences of subsection (c).

Session Laws 2009-340, s. 2, effective October 1, 2009, added the last seven sentences in the first paragraph of subdivision (d)(2).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment, "Criminal Defendants Deemed Incapable to Proceed to Trial: An Evaluation of North Carolina's Statutory Scheme," see 26 Campbell L. Rev. 41 (2004).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former statutory provisions.*

Duty of Physician to Make Examination. — It was the purpose of former G.S. 122-58.4 that only mentally ill persons in need of restraint be deprived of their liberty. This could only be assured by the doctor making the required examination before executing the certificate. McLean v. Sale, 38 N.C. App. 520, 248 S.E.2d 372 (1978), cert. denied, 296 N.C. 585, 254 S.E.2d 32 (1979).

Former G.S. 122-58.4 imposed a positive duty to make the examination before signing the certificate. McLean v. Sale, 38 N.C. App. 520, 248 S.E.2d 372 (1978), cert. denied, 296 N.C. 585, 254 S.E.2d 32 (1979); McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Physical Presence of Person to Be Examined Required. — "Examine" requires that the person to be examined be physically in the presence of the qualified physician, so that the physician may actually utilize his five senses, or such of them as he deems necessary, in carrying out the mandate of this section. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

The requirement that the law-enforcement officer must take and present the person to be examined to the physician requires that the person must be physically present before the physician for the purpose of the examination. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

An intentional or negligent violation of the physician's duty to make an examination cannot be the subject of immunity. McLean v. Sale, 38 N.C. App. 520, 248 S.E.2d 372 (1978), cert. denied, 296 N.C. 585, 254 S.E.2d 32 (1979).

Negligence. — Involuntary commitment statutes, including G.S. 122C-263 are designed to protect against arbitrary or ill-considered involuntary commitment and, although there may be some "generalized safety implications" in those statutes, they are not considered public safety statutes as defined by the North Carolina Supreme Court; therefore, any violation thereof cannot be considered negligence per se. Gregory v. Kilbride, 150 N.C. App. 601, 565 S.E.2d 685, 2002 N.C. App. LEXIS 685 (2002), cert. denied, 357 N.C. 164, 580 S.E.2d 365 (2003).

Relief from Wrongful Certification. — A complaint which alleged that the defendant had certified that he had examined the plaintiff pursuant to this section and recommended commitment when in fact the plaintiff had not been examined by the defendant was sufficient to state a claim for which relief could be granted for wrongful certification of the plaintiff for admission to a mental hospital. McLean v. Sale, 38 N.C. App. 520, 248 S.E.2d 372 (1978), cert. denied, 296 N.C. 585, 254 S.E.2d 32 (1979).

A physician's failure to perform an examination prior to signing certificate is a violation of the statute, and if plaintiff is involuntarily committed as a result of defendant's actions, a cause of action arises against defendant, and this is true regardless of what may have prompted defendant to fail to make the examination of plaintiff. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Relevance of Reasons for Failing to Examine. — The reasons for which defendant physician failed to make the required examination prior to signing the certificate were competent on the question of punitive damages, but not on the issue of whether defendant violated his statutory duty to plaintiff. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

Cited in In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

§ 122C-264. Duties of clerk of superior court and the district attorney.

(a) Upon receipt of a physician's or eligible psychologist's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Upon receipt of a physician's or eligible psychologist's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed pursuant to G.S. 122C-262, the clerk of superior court of the county where the treatment facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours, excluding Saturday, Sunday, and holidays, for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the treatment facility of the court's findings by telephone and shall proceed as set forth in subsections (b), (c), and (f) of this section.

(c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address. G.S. 1A-1, Rule 6 shall not apply.

(d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.

(d1) For hearings and rehearings pursuant to G.S. 122C-268.1 and G.S. 122C-276.1, the clerk of superior court shall calendar the hearing or rehearing and shall notify the respondent, his counsel, counsel for the State, and the district attorney involved in the original trial. The notice shall be given in the same manner as the notice required by subsection (c) of this section. Upon receipt of the notice, the district attorney shall notify any persons he deems appropriate, including anyone who has filed with his office a written request for notification of any hearing or rehearing concerning discharge or conditional release of a respondent. Notice sent by the district attorney shall be by first-class mail to the person's last known address.

(e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings.

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, ss. 8, 16; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 7; 1985 (Reg. Sess., 1986), c. 863, s. 19; 1987, c. 596, s. 2; 1991, c. 37, s. 4; 1995 (Reg. Sess., 1996), c. 739, s. 9.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

CASE NOTES

Constitutionality of Former Section. — Former G.S. 122-58.5 stated that at the minimum the notice should be served 48 hours in advance of the hearing. This time period was constitutionally adequate to allow for sufficient preparation, especially in light of the fact that continuances could be granted, which would prevent any prejudice because of insufficient time to prepare. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

Former G.S. 122-58.5 used the terms "notify" and "notice." There could be little doubt that these terms were used to carry the full panoply of due process notice mandated by the law of the land. When the legislature uses the term "notice" it means such notice as is required by due process and, therefore, former G.S. 122-58.5 was constitutional on its face. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

In light of the nature of the proceedings, the procedure in former G.S. 122-58.5 was reasonably calculated to inform the respondent in an involuntary commitment proceeding of the nature and purpose of the hearing and, therefore, was not constitutionally infirm. There is no constitutional mandate to notify the respondent of the burden of proof or to serve upon him a list of witnesses and the substance of their proposed testimony. Such is not even required in a criminal proceeding. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

§ 122C-265. Outpatient commitment; examination and treatment pending hearing.

(a) If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The custody order is valid throughout the State. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination.

(b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.

(c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.

(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If a respondent becomes dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated. (1983, c. 638, s. 11; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 6; 1989 (Reg. Sess., 1990), c. 823, s. 5; 1991, c. 636, s. 2(2); c. 761, s. 49; 2004-23, s. 2(a).)

§ 122C-266. Inpatient commitment; second examination and treatment pending hearing.

(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. This physician shall not be the same physician who completed the certificate or examination under the provisions of G.S. 122C-262 or G.S. 122C-263. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

(1) If the physician finds that the respondent is mentally ill and is dangerous to self, as defined by G.S. 122C-3(11)a., or others, as defined by G.S. 122C-3(11)b., the physician shall hold the respondent at the facility pending the district court hearing.

(2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), the physician shall show these findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of these findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and the examination report to the proposed outpatient treatment physician or center.

(3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), the physician shall release the respondent and the proceedings shall be terminated.

(4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law enforcement officer or other person designated to provide transportation shall return the respondent to the respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.

(b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.

(c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.

(d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination shall occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 4; 1989 (Reg. Sess., 1990), c. 823, s. 6; 1991, c. 37, s. 9; 1995 (Reg. Sess., 1996), c. 739, s. 10(a), (b).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Effect of § 8-53. — For discussion of former statutory provisions making it manifest that the physician's role in involuntary commitment proceedings was not intended to be inhibited by G.S. 8-53, see In re Farrow, 41 N.C. App. 680, 255 S.E.2d 777 (1979).

"Within 24 hours of Arrival" — Applicability. — The words "within 24 hours of arrival" demonstrate the applicability of that provision to the initial commitment phase. It would not make sense to apply that provision to the circumstances of a rehearing at which time there is no longer a question of whether the initial commitment had been proper. In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

Second Examination — Purpose. — The purpose of the second examination is to protect the rights of a respondent who has been taken to a medical facility immediately prior thereto to insure that he was properly committed. In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

Proof Sufficient for Finding of "Dangerous to Self." — The doctor's findings on the examination report and testimony at the involuntary commitment hearing were sufficient proof that appellant fit the category of one who was "dangerous to self." In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

§ 122C-267. Outpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8; 1987, c. 282, s. 18; 1987 (Reg. Sess., 1988), c. 1037, s. 113.1; 2000-144, s. 38.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Editor's Note. — *The cases below were decided under former statutory provisions.*

The 10-day custody period prior to a full adversary hearing does not constitute a denial of due process. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

The failure to provide a jury trial in involuntary commitment proceedings does not violate the equal protection clause. French v. Blackburn, 428 F. Supp. 1351

(M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

A standard of proof beyond a reasonable doubt is not mandated by the due process clause, and the North Carolina legislature's choice of proof by clear, cogent and convincing evidence does not violate that constitutional prohibition. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

Self-Incrimination. — To apply the privilege against self-incrimination to proceedings under former similar provisions would be to destroy the valid purposes which they serve, as it would make them unworkable and ineffective. French v. Blackburn, 428 F. Supp. 1351 (M.D.N.C. 1977), aff'd, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).

Failure to Afford Right of Cross-Examination. — Where the record showed that examining physician's affidavit formed the basis of order of commitment, and respondent was not afforded the right, guaranteed by statute, to cross-examine the physician, the evidence was not sufficient to support the findings required and to support commitment. In re Benton, 26 N.C. App. 294, 215 S.E.2d 792 (1975).

Assuming, without conceding, that a physician's brief statement and conclusion as to the imminent danger of the respondent would support a recommitment order, his failure to appear at the hearing deprived the respondent of his right of confrontation and cross-examination. In re Mackie, 36 N.C. App. 638, 244 S.E.2d 450 (1978).

Effect of § 8-53. — For discussion of former statutory provisions making it manifest that the physician's role in involuntary commitment proceedings was not intended to be inhibited by G.S. 8-53, see In re Farrow, 41 N.C. App. 680, 255 S.E.2d 777 (1979).

Findings Prerequisite to Commitment. — Statutory mandate under former statutory provisions required as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent was mentally ill or inebriate, and second, that the respondent was dangerous to himself or others. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975); In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977); In re Bartley, 40 N.C. App. 218, 252 S.E.2d 553 (1979).

Facts Must Be Found and Recorded. — The two distinct ultimate facts of (1) mental illness or inebriacy and (2) danger under former statutory provisions had to be supported by facts which were found from the evidence and recorded by the district court. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

Recording of Findings Mandatory. — The direction to the court under former G.S. 122-58.7(i) to record the facts which supported its findings was mandatory. In re Koyi, 34 N.C. App. 320, 238 S.E.2d 153 (1977); In re Jacobs, 38 N.C. App. 573, 248 S.E.2d 448 (1978); In re Bartley, 40 N.C. App. 218, 252 S.E.2d 553 (1979); In re Caver, 40 N.C. App. 264, 252 S.E.2d 284 (1979).

No Requirement That Findings Be Based Solely on Medical Evidence. — The involuntary commitment statutes do not require that an order of commitment may issue only when the requisite factual findings are supported by competent medical evidence. All that is required is that the court make the essential findings from "clear, cogent, and convincing evidence." In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

No Overt Act Required. — An overt act may be clear, cogent and convincing evidence which will support a finding of danger, but it is not necessary that there be an overt act to establish dangerousness. In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976).

Threats as Evidence of Dangerousness. — The fundamental differences between a criminal charge based entirely on threats and an involuntary commitment in which threats merely serve as some evidence of the dangerousness of the person weigh against the use of such strict standards in the latter case. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978).

Inadequate Evidence for Findings. — The finding that respondent was "preoccupied with religious subjects" hardly furnished support for an ultimate finding either that she was mentally ill or that she was imminently dangerous to herself or others. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Where doctor testified only that the respondent was unable to care for herself and that she was a complete nursing care problem, there was no showing that the respondent was dangerous to herself and the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978).

For other instances in which the State failed to present clear, cogent and convincing evidence of imminent danger, see In re Salem, 31 N.C. App. 57, 228 S.E.2d 649 (1976); In re Hatley, 291 N.C. 693, 231 S.E.2d 633 (1977).

Burden of Proof on State. — Subsection (a) of former G.S. 122-58.7 indicated a conscious legislative decision to place the burden on the State to come forward with evidence to justify the commitment within 10 days. In re Jacobs, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

Questions of Fact. — Whether a person is mentally ill or inebriate, and whether he is dangerous to himself or others, present questions of fact. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

It is for the trier of fact to determine

whether evidence offered in a particular case is clear, cogent, and convincing. In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

Standards on Review. — On appeal from an order of commitment, the questions for determination in the Court of Appeals become (1) whether the court's ultimate findings are indeed supported by the "facts" which the court recorded in its order as supporting its findings, and (2) whether in any event there was competent evidence to support the court's findings. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

Time for Hearing When Tenth Day Falls on Sunday. — Where the tenth day following the day the respondent was taken into custody was a Sunday, the hearing called for the following Monday was in apt time. In re Underwood, 38 N.C. App. 344, 247 S.E.2d 778 (1978).

Denial of Right to Hearing Within 10 Days. — Where the trial court continued the respondent's hearing, over objection, for seven days, and the State failed at the originally scheduled hearing to offer any evidence or to come forward with even a copy of the magistrate's order of commitment or the petition for involuntary commitment, the result was that respondent was denied his right to a hearing before the district court within 10 days of confinement. In re Jacobs, 38 N.C. App. 573, 248 S.E.2d 448 (1978).

§ 122C-268. Inpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. 122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:

(1) The court;
(2) Respondent's counsel; or
(3) The State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 1014, s. 195(b); 1987 (Reg. Sess., 1988), c. 1037, s. 114; 1989, c. 141, s. 11; 1989 (Reg. Sess., 1990), c. 823, s. 7; 1991, c. 37, s. 10; c. 257, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 11(a), (b); 2000-144, s. 39.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

Legal Periodicals. — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Editor's Note. — *Most of the cases below were decided under former statutory provisions.*

The 10-day custody period prior to a full adversary hearing does not constitute a denial of due process. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Findings Prerequisite to Commitment. — Statutory mandate requires as a condition to a valid commitment order that the district court find two distinct facts: first, that the respondent is mentally ill or inebriate, and second, that the respondent is dangerous to himself or others. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980); In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Trial court must find three elements present in order to find that respondent is dangerous to others: (1) within the recent past (2) respondent has (a) inflicted serious bodily harm on another, or (b) attempted to inflict serious bodily harm on another, or (c) threatened to inflict serious bodily harm on another, or (d) has acted in such a manner as to create a substantial risk of serious bodily harm to another, and (3) there is a reasonable probability that such conduct will be repeated. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

No Overt Act Required. — The present statutory definition of "dangerous to others" does not require a finding of overt acts. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

It is for the trier of fact to determine whether evidence offered in a particular case is clear, cogent, and convincing. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

The Court of Appeals does not consider whether the evidence of respondent's mental illness and dangerousness was clear, cogent and convincing. It is for the trier of fact to determine whether the competent evidence offered in a particular case met the burden of proof. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

The trier of fact alone must determine whether the evidence presented is clear, cogent and convincing. A court's only function on appeal is to determine whether there was any competent evidence to support the factual findings made. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982).

It is not the court's function on appeal to determine if the evidence offered meets the statutory standard but simply to determine whether there was any competent evidence to support the factual findings made. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983).

In its order the trial court must record the facts upon which its ultimate findings are based. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980); In re Crainshaw, 54 N.C. App. 429, 283 S.E.2d 553 (1981).

Order of commitment was not void on its face where the court recorded the facts by placing "x's" by the recorded facts on the order of commitment form. In re Crouse, 65 N.C. App. 696, 309 S.E.2d 568 (1983).

Denial of Gun Permit Not Warranted. — G.S. 14-404(c)(4) did not support the denial of a gun permit application to an applicant since the G.S. 122C-261(e), 122C-262 122C-263, 122C-266, and 122C-268 requirements were not met, even though the applicant was taken for an involuntary psychiatric examination when the applicant was 21 years old; neither inpatient nor outpatient commitment was recommended. Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

Findings Insufficient to Support Commitment Order. — Involuntary commitment order was error because the order contained insufficient findings, as specifically required by G.S. 122C-268(j), to support the trial court's determination that the patient was dangerous to himself and to others; statements in a physician's report, incorporated by the order, that the patient was a 56-year-old white male, with a history of alcohol abuse/dependence, admitted with manic episode, and who continued to be symptomatic with limited insight regarding his illness, were not sufficient to support the trial court's findings. In re Booker, — N.C. App. —, 667 S.E.2d 302, 2008 N.C. App. LEXIS 1808 (2008).

Standards on Review. — On appeal from an order of commitment, the questions for determination in the Court of Appeals become (1) whether the Court's ultimate findings are indeed supported by the "facts" which the Court recorded in its order as supporting its findings, and (2) whether in any event there was competent evidence to support the Court's findings. In re Frick, 49 N.C. App. 273, 271 S.E.2d 84 (1980).

On appeal of a commitment order, the function of the Court of Appeals is to determine whether there was any competent evidence to support the facts recorded in the commitment order and whether the trial court's ultimate findings of mental illness and dangerous to self or others were supported by the facts recorded in the order. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

Appellate court applied the same standard it used in reviewing a trial court's order committing a defendant to a mental hospital to defendant's appeal from a trial court's order recommitting him to a mental hospital; the record supported the trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity should not be released because he did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, 151 N.C. App. 27, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

Cited in In re Woodie, 116 N.C. App. 425, 448 S.E.2d 142 (1994).

§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.

(j) Nothing in this section shall limit the respondent's right to habeas corpus relief. (1991, c. 37, s. 2; 1991 (Reg. Sess., 1992), c. 1034, ss. 2, 3; 1995, c. 140, s. 1; 2000-144, s. 40.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

Legal Periodicals. — For comment, "Senate Bill 43: A Refinement of North Carolina's Involuntary Civil Commitment Procedures," see 14 Campbell L. Rev. 105 (1992).

CASE NOTES

Constitutionality. — Subsection (i) of this section and G.S. 122C-276.1(c) do not violate the due process of equal protection clauses of the federal and State Constitutions. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Amendment made in 1991 to subsection (i) of this section and G.S. 122C-276.1(c), which required respondent to bear the burden of proof to show that he was no longer dangerous or mentally ill and opened the hearing to the public, were procedural changes that did not violate substantive rights or protections though they could have disadvantaged respondent. Therefore, there was no violation of the Ex Post Facto Clause. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Applied in State v. Millsaps, 169 N.C. App. 340, 610 S.E.2d 437, 2005 N.C. App. LEXIS 617 (2005).

Cited in State v. Bare, — N.C. App. —, 677 S.E.2d 518, 2009 N.C. App. LEXIS 775 (2009).

§ 122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The counsel provided for in G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change. (1975, 2nd Sess., c. 983, s. 133; 1981, c. 537, s. 6; 1983, c. 380, s. 7; 1985, c. 589, s. 2; 1991, c. 37, ss. 11, 12; 1995, c. 140, s. 2; 2000-144, s. 41; 2001-487, s. 29.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

§ 122C-270. Attorneys to represent the respondent and the State.

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321. (1973, c. 47, s. 2; c. 1408, s. 1; 1977, c. 400, s. 11; 1979, c. 915, s. 12; 1983, c. 275, ss. 1, 2; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 115; 1989, c. 141, s. 12; 1991, c. 257, s. 1; 1995 (Reg. Sess., 1996), c. 739, s. 12(a); 2000-144, s. 42; 2006-264, s. 61(a).)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

OPINIONS OF ATTORNEY GENERAL

Protection of Child's Rights. — Although a minor cannot obtain legal representation without the consent of the legally responsible person, the rights of the child can be adequately protected. First, the Department of Social Services can conduct an investigation of the legally responsible person pursuant to G.S. 7A-542 et seq. [see now G.S. 7B-300 et seq.], the guardian ad litem program can provide additional support for abused, neglected, or dependent juveniles, including legal support and, a minor can receive representation for the commitment proceedings by virtue of G.S. 122C-224.1 and this section. See opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, — N.C.A.G. — (December 20, 1995).

§ 122C-271. Disposition.

(a) If an examining physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

(2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.

(b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show.

(2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, no respondent found to be both mentally retarded and mentally ill may be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

(3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which the respondent was last a client so notified.

(4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient

commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised.

(c) If the respondent was found not guilty by reason of insanity and has been held in a 24-hour facility pending the court hearing held pursuant to G.S. 122C-268.1, the court may make one of the following dispositions:

(1) If the court finds that the respondent has not proved by a preponderance of the evidence that he no longer has a mental illness or that he is no longer dangerous to others, it shall order inpatient treatment at a 24-hour facility for a period not to exceed 90 days.

(2) If the court finds that the respondent has proven by a preponderance of the evidence that he no longer has a mental illness or that he is no longer dangerous to others, the court shall order the respondent discharged and released. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 20-22; 1989, c. 225, s. 1; c. 770, s. 73; 1989 (Reg. Sess., 1990), c. 823, s. 8; 1991, c. 37, s. 13; 1991 (Reg. Sess., 1992), c. 1034, s. 5; 1995 (Reg. Sess., 1996), c. 739, s. 13.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 739, s. 15, effective January 1, 1997, and applicable to commitments on or after that date, provides: "Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness."

CASE NOTES

Finding of Dangerousness. — By requiring that the person be found dangerous to herself or others, the legislature has made it clear that involuntary commitment is not for all those who are mentally ill, or even for those whose mental illness may make it necessary for them to have custodial care. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978), decided under former statutory provisions.

Where the doctor testified only that the respondent was unable to care for herself and that she was a complete nursing care problem, there was no showing that the respondent was dangerous to herself and the requirements for involuntary commitment were not met. In re Doty, 38 N.C. App. 233, 247 S.E.2d 628 (1978), decided under former statutory provisions.

Court's Authority Limited If Defendant Found Not to Be Subject to Involuntary Commitment. — Superior court had no authority to enter order requiring Division of Adult Probation and Parole, without its consent, to provide supervision of defendant, who had been determined incompetent to stand trial but not subject to involuntary commitment, while in custody of his former wife. State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

§ 122C-272. Appeal.

Judgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2; 2009-570, s. 27.)

Effect of Amendments. — Session Laws 2009-570, s. 27, effective August 28, 2009, substituted "Judgment" for "Judgement" at the beginning of the section.

Legal Periodicals. — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

CASE NOTES

Appeal is not moot solely because period of commitment has expired. In re Taylor, 25 N.C. App. 642, 215 S.E.2d 789 (1975), decided under former statutory provisions.

Though respondent had been released, her appeal was not moot. So long as a judgment of involuntary commitment remains unchallenged, potentially adverse collateral consequences may continue. In re Carter, 25 N.C. App. 442, 213 S.E.2d 409 (1975), decided under former statutory provisions.

Effect of Discharge on Challenge to Involuntary Commitment. — Discharge does not render questions challenging the involuntary commitment proceeding moot in view of the adverse consequences which could arise therefrom, including the possibility that the commitment could form the basis of a future commitment. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978), decided under former statutory provisions.

§ 122C-273. Duties for follow-up on commitment order.

(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

(1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.

(2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The custody order is valid throughout the State. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.

(3) In no case may the respondent be physically forced to take medication or forcibly detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.

(4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was

initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.

(5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself, as defined by G.S. 122C-3(11)a., and others, as defined in G.S. 122C-3(11)b., may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.

(b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.

(c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient commitment is supervised and the outpatient commitment shall be terminated.

(d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 23-26; 1989 (Reg. Sess., 1990), c. 823, s. 9; 1991, c. 37, s. 14; 2004-23, s. 2(b).)

Legal Periodicals. — For article, "Civil Commitment of Minors: Due and Undue Process," see 58 N.C.L. Rev. 1133 (1980).

§ 122C-274. Supplemental hearings.

(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated outpatient treatment physician or center. The respondent shall be notified at least 72 hours before the hearing by personally serving on him an order to appear. Other persons shall be notified as provided in G.S. 122C-264(c).

(b) The procedures for the hearing shall follow G.S. 122C-267.

(c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

(1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., order an examination by the same or different physician or eligible psychologist as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;

(2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or

(3) Discharge the respondent from the order and dismiss the case.

(d) At the supplemental hearing for a respondent who has moved or intends to move to another county, the court shall determine if the respondent meets the criteria for outpatient commitment set out in G.S. 122C-263(d)(1). If the court determines that the respondent no longer meets the criteria for outpatient commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for outpatient commitment, it shall continue the outpatient commitment but shall designate a physician or center at the respondent's new residence to be responsible for the management or supervision of the respondent's outpatient commitment. The court shall order the respondent to appear for treatment at the address of the newly designated outpatient treatment physician or center and shall order venue for further court proceedings under the outpatient commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the outpatient commitment has been supervised shall transfer the records regarding the outpatient commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the outpatient commitment has been supervised shall send a copy of the court's order directing the continuation of outpatient treatment under new supervision to the newly designated outpatient treatment physician or center.

(e) At any time during the term of an outpatient commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing by the respondent to the clerk of superior court of the county where the outpatient commitment is being supervised. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1). The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.

(f) At supplemental hearings requested pursuant to G.S. 122C-277(a) for transfer from inpatient to outpatient commitment, the court shall determine whether the respondent meets the criteria for either inpatient or outpatient commitment. If the court determines that the respondent continues to meet the criteria for inpatient commitment, it shall order the continuation of the original commitment order. If the court determines that the respondent meets the criteria for outpatient commitment, it shall order outpatient commitment for a period of time not in excess of 90 days. If the court finds that the respondent does not meet either criteria, the respondent shall be discharged and the case dismissed. (1983, c. 638, s. 17; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 10.)

§ 122C-275. Outpatient commitment; rehearings.

(a) Fifteen days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician or center determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the physician or center shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing.

(b) Notice and procedures of rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-263(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated outpatient treatment physician or center. If the respondent continues to meet the criteria of G.S. 122C-263(d)(1), the court may order outpatient commitment for an additional period not in excess of 180 days. (1983, c. 638, s. 20; c. 864, s. 4; 1985, c. 589, s. 2; 1991, c. 37, s. 15.)

CASE NOTES

Editor's Note. — *The case below was decided under comparable provisions of former Chapter 122.*

Constitutionality. — See In re Rogers, 63 N.C. App. 705, 306 S.E.2d 510, cert. denied and appeal dismissed, 309 N.C. 633, 308 S.E.2d 716 (1983), appeal dismissed, 465 U.S. 1095, 104 S. Ct. 1583, 80 L. Ed. 2d 117 (1984).

§ 122C-276. Inpatient commitment; rehearings for respondents other than insanity acquittees.

(a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the district court district as defined in G.S. 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found incapable of proceeding of the time and place of the hearing.

(b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the district court district as defined in G.S. 7A-133 in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county, in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979, c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18, 19; c. 864, s. 4; 1985, c. 589, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 116; 1991, c. 37, s. 5.)

CASE NOTES

Editor's Note. — *Most of the cases below were decided under former statutory provisions.*

The indeterminate commitment of any patient without periodic rehearings is clearly proscribed. In re Mikels, 31 N.C. App. 470, 230 S.E.2d 155 (1976).

Findings Prerequisite to Commitment. — In order to support the recommitment of a respondent in an involuntary commitment proceeding, the trial court must find by clear, cogent, and convincing evidence that the respondent is mentally ill or inebriate, is dangerous to himself or others, and is in need of continued hospitalization. In re Mackie, 36 N.C. App. 638, 244 S.E.2d 450 (1978).

Facts Must Be Found and Recorded. — The two ultimate facts of (1) mental illness or inebriety and (2) danger, must be supported by facts which are found from the evidence and recorded by the district court. In re Mackie, 36 N.C. App. 638, 244 S.E.2d 450 (1978).

The "words" imminently dangerous" in former section simply meant that a person posed a danger to himself or others in the immediate future. In re Ballard, 34 N.C. App. 228, 237 S.E.2d 541 (1977).

Overt Acts. — An overt act may be clear, cogent and convincing evidence which will support a finding of danger, but it is not necessary that there be an overt act to establish imminent dangerousness. In re Ballard, 34 N.C. App. 228, 237 S.E.2d 541 (1977).

Effect of § 8-53. — For discussion of former statutory provisions making it manifest that the physician's role in involuntary commitment proceedings was not intended to be inhibited by G.S. 8-53, see In re Farrow, 41 N.C. App. 680, 255 S.E.2d 777 (1979).

Disposition If Notice Is Insufficient. — The 15-day period of former G.S. 122-58.11 did not have the effect of a statute of limitations so as to necessitate dismissal of a proceeding brought on less notice. Dismissal was too drastic, and unless the respondent could show some prejudice, the proper response would be to continue the proceeding until ample notice had been given. In re Boyles, 38 N.C. App. 389, 247 S.E.2d 785, appeal dismissed, 296 N.C. 411, 251 S.E.2d 468 (1978).

Cited in In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

OPINIONS OF ATTORNEY GENERAL

Actual Notice of Rehearing Is Required Absent Waiver or Consent to Nonservice. — See opinion of Attorney General to Mr. J. Laird Jacob, Jr., Broughton Hospital, 44 N.C.A.G. 33 (1974), rendered under former statutory provisions.

§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.

(a) At least 15 days before the end of any inpatient commitment period ordered pursuant to G.S. 122C-268.1, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1), unless the hearing is waived by the respondent.

(b) The proceedings of the rehearing shall be governed by the same procedures provided by G.S. 122C-268.1.

(c) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order inpatient commitment be continued for a period not to exceed 180 days. The court shall make a written record of the facts that support its findings.

(d) At least 15 days before the end of any commitment period ordered pursuant to subsection (c) of this section and annually thereafter, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1). The procedures and standards for the rehearing are the same as under this section. No third or subsequent inpatient recommitment order shall be for a period longer than one year. (1991, c. 37, s. 3; 1991 (Reg. Sess., 1992), c. 1034, s. 4.)

CASE NOTES

Constitutionality. — Subsection (c) of this section and G.S. 122C-268.1(i) do not violate the due process of equal protection clauses of the federal and State Constitutions. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Amendment made in 1991 to subsection (c) of this section and G.S. 122C-268.1(i), which required respondent to bear the burden of proof to show that he was no longer dangerous or mentally ill and opened the hearing to the public were procedural changes that did not violate substantive rights or protections though they could have disadvantaged respondent. Therefore, there was no violation of the Ex Post Facto Clause. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

The trial court correctly found the appellant "dangerous to others," under this section and G.S. 122C-3(11), in spite of the appellant's objection that murders which happened 10 years in the past should not be considered because of their "remoteness," where, from both evidentiary and medical perspectives, the nature of his crimes was more important than their timing, and where the court's findings on his dangerousness were also rooted in additional evidence unrelated to his prior crimes, including (1) his past and present mental illness, (2) his behavior since July 17, 1988 (including "slaw incident" during which he became upset and angry with his job supervisor over his co-worker's premature disposal of coleslaw from the hospital grill where he was employed), and (3) his high likelihood of post-release relapse into multi-substance abuse, which all experts agreed was a trigger for his 1988 psychosis during which he killed four people and wounded several others. In re Hayes, 139 N.C. App. 114, 532 S.E.2d 553, 2000 N.C. App. LEXIS 820 (2000).

Record supported trial court's judgment that defendant who was acquitted of multiple homicides by reason of insanity and was committed to a mental hospital did not meet his burden of proving he no longer had a mental illness and was not dangerous. In re Hayes, 151 N.C. App. 27, 564 S.E.2d 305, 2002 N.C. App. LEXIS 648 (2002).

§ 122C-277. Release and conditional release; judicial review.

(a) Except as provided in subsections (b) and (b1) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in subsections (b) and (b1) of this section, the attending physician may also release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing facility. A law-enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found incapable of proceeding may represent the State's interest at the hearing.

(b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court. The clerk shall calendar a hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may represent the State's interest at the hearing. The hearing shall be conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall discharge or conditional release under this section be allowed for a respondent during the period from automatic commitment to hearing under G.S. 122C-268.1.

(c) If a committed respondent under subsections (a), (b), or (b1) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2; 1991, c. 37, s. 6.)

Legal Periodicals. — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

CASE NOTES

Notice and Hearing. — The statutory provisions of former G.S. 122-58.13(b) requiring notice and hearing prior to release from involuntary commitment were mandatory and not merely directive, applied in every case in which a respondent was initially committed after a judicial determination of not guilty by reason of insanity or incapacity to stand trial, and remained applicable throughout a respondent's commitment. In re Rogers, 78 N.C. App. 202, 336 S.E.2d 682 (1985), cert. denied, 316 N.C. 194, 341 S.E.2d 578 (1986).

Court's Authority Limited If Defendant Found Not to Be Subject to Involuntary Commitment. — Superior court had no authority to enter order requiring Division of Adult Probation and Parole, without its consent, to provide supervision of defendant, who had been determined incompetent to stand trial but not subject to involuntary commitment, while in custody of his former wife. State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

Jury Adequately Charged Regarding Procedures Under Acquittal on Grounds of Insanity. — Pattern jury instruction in N.C.P.I.—Crim. 304.10 which informed the jury of the commitment hearing procedures in G.S. 15A-1321 and 15A-1322, pursuant to Article 5 of Chapter 122C, adequately charged the jury regarding procedures under acquittal on the ground of insanity. State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988).

Cited in State v. Coppage, 94 N.C. App. 630, 381 S.E.2d 169 (1989).

§§ 122C-278 through 122C-280: Reserved for future codification purposes.

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.

(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law-enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician or eligible psychologist recommends commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S. 122C-283(d)(1). If a physician or eligible psychologist executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed. The custody order is valid throughout the State.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 2004-23, s. 1(b).)

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under former statutory provisions.*

Requirements of former § 122-58.3 (see now §§ 122C-261 and 122C-281) were required to be followed diligently. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980); In re Barnhill, 72 N.C. App. 530, 325 S.E.2d 308 (1985).

Contents and Sufficiency of Affidavit. — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Cited in Waldron v. Batten, 191 N.C. App. 237, 662 S.E.2d 568, 2008 N.C. App. LEXIS 1193 (2008).

§ 122C-282. Special emergency procedure for violent individuals.

When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician or eligible psychologist for examination would likely endanger life or property, a law-enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122C-281 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property.

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician or eligible psychologist for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2.)

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1097 (1981).

CASE NOTES

Editor's Note. — The case annotated below was decided under former statutory provisions.

Former § 122-58.18 (see now §§ 122C-262 and 122C-282) was not intended to be used indiscriminately, and clearly defined the limited time and circumstances for its use. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Affidavit. — The affidavit must set out facts upon which the affiant's opinion is based. Such facts must be sufficient to establish to the affiant's satisfaction that the patient is imminently dangerous to himself or others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Reliance on Information Gained from Others. — An officer's petition for involuntary commitment of respondent pursuant to the emergency procedures for violent persons was not required to be dismissed because the officer did not personally observe the respondent in an act of violence but relied on information gained from others. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

No Overt Act Required. — In finding one to be imminently dangerous, there is no requirement of an overt act. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

Concealing a potentially dangerous weapon is evidence of imminent danger. In re Hernandez, 46 N.C. App. 265, 264 S.E.2d 780 (1980).

§ 122C-283. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

(a) Without unnecessary delay after assuming custody, the law-enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, he shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility if one is available; if an area facility is not available, he may be detained under appropriate supervision, in his home, in a private hospital or a clinic, or in a general hospital, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist; or

(2) The respondent is in custody under the special emergency procedure described in G.S. 122C-282.

In these cases when it is recommended that the respondent be detained in a 24-hour facility, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous substance abuse including, if available, previous treatment history; and

(2) Dangerousness to himself or others as defined in G.S. 122C-3(11).

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

(1) If the physician or eligible psychologist finds that the respondent is a substance abuser and is dangerous to himself or others, he shall recommend commitment and whether the respondent should be released or be held at a 24-hour facility pending hearing and shall so show on [the] his examination report. Based on the physician's or eligible psychologist's recommendation the law-enforcement officer or other designated individual shall take the respondent to a 24-hour facility described in G.S. 122C-252 or release the respondent.

(2) If the physician or eligible psychologist finds that the condition described in subdivision (1) of this subsection does not exist, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician or eligible psychologist and the facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

(1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 9.)

Editor's Note. — Session Laws 1985, c. 695, substituted "his" for "physician's" near the end of the first sentence of subdivision (d)(1). The word "the" preceding "his" probably also should have been deleted by the act and has therefore been bracketed.

Temporary Waiver of Certain Mental Health Commitment Requirements. — Session Laws 2003-178, s. 1, as amended by Session Laws 2006-66, s. 10.27, Session Laws 2007-504, s. 1.1(a), and Session Laws 2009-340, s. 3, effective July 1, 2003 and expiring October 1, 2010, provides: "The Secretary of Health and Human Services may, upon request of an LME, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

"(1) The Secretary has received a request from an LME to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the LME shall specifically describe:

"a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

"b. How the waiver will enable the LME to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

"c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

"d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

"(2) The Secretary shall review the request and may approve it upon finding that:

"a. The request meets the requirements of this section.

"b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

"c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

"d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

"(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services by October 1, 2009. The report shall include data gathered from all participating LMEs since the beginning of the pilot.

"(4) The waiver granted by the Secretary under this section shall be in effect until October 1, 2010.

"(5) The Secretary may grant a waiver under this section to up to 15 LMEs.

"(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

"(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.

"(8) The LME shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary."

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year."

Session Laws 2006-66, s. 28.6 is a severability clause.

Session Laws 2007-504, s. 1.1(b), provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall review the report submitted by the Secretary under Section 1.1.(a) of this act. The LOC shall make recommendations to the 2010 Regular Session of the 2009 General Assembly regarding whether to extend the pilot, discontinue the pilot, or make the provisions of the pilot permanent and statewide."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Editor's Note. — *The case below was decided under former statutory provisions.*

Duty of Physician to Make Examination. — Former G.S. 122-58.4 (see now G.S. 122C-263 and 122C-283) imposed a positive duty to make the examination before signing the certificate. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Physical Presence of Person to Be Examined Required. — "Examine" requires that the person to be examined be physically in the presence of the qualified physician, so that the physician may actually utilize his five senses, or such of them as he deems necessary, in carrying out the mandate of this section. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

The requirement that the law-enforcement officer must take and present the person to be examined to the physician requires that the person must be physically present before the physician for the purpose of the examination. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Relief from Wrongful Certification. — A physician's failure to perform an examination prior to signing certificate is a violation of the statute, and if plaintiff is involuntarily committed as a result of defendant's actions, a cause of action arises against defendant, and this is true regardless of what may have prompted defendant to fail to make the examination of plaintiff. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

Relevance of Reasons for Failing to Examine. — The reasons defendant physician failed to make the required examination prior to signing certificate were competent on the question of punitive damages, but not on the issue of whether defendant violated his statutory duty to plaintiff. McLean v. Sale, 54 N.C. App. 538, 284 S.E.2d 160 (1981), cert. denied, 305 N.C. 301, 290 S.E.2d 703 (1982).

§ 122C-284. Duties of clerk of superior court.

(a) Upon receipt of a physician's or eligible psychologist's finding that a respondent is a substance abuser and dangerous to himself or others and that commitment is recommended, the clerk of superior court of the county where the facility is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the petition was initiated shall upon direction of a district court judge assign counsel, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Notice to the respondent required by subsection (a) of this section shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be given by mailing at least 72 hours before the hearing a copy by first-class mail postage prepaid to the individual at his last known address. G.S. 1A-1, Rule 6 shall not apply.

(c) Upon receipt of notice that transportation is necessary to take a committed respondent to a 24-hour facility pursuant to G.S. 122C-290(b), the clerk shall issue a custody order for the respondent.

(d) The clerk of superior court shall upon the direction of a district court judge calendar all hearings, supplemental hearings, and rehearings and provide all notices required by this Part. (1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, s. 8; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 10; 1985 (Reg. Sess., 1986), c. 863, s. 27.)

§ 122C-285. Commitment; second examination and treatment pending hearing.

(a) Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a qualified professional. This professional shall be a physician if the initial commitment evaluation was conducted by an eligible psychologist. The examination shall include the assessment specified in G.S. 122C-283(c). If the qualified professional finds that the respondent is a substance abuser and is dangerous to himself or others, he shall hold and treat the respondent at the facility or designate other treatment pending the district court hearing. If the qualified professional finds that the respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), he shall release the respondent and the proceeding shall be terminated. In this case the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the custody order originated. If the respondent is released, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

(b) If the 24-hour facility described in G.S. 122C-252 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 11; 1985 (Reg. Sess., 1986), c. 863, s. 28.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 122C-286. Commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, counsel shall be appointed to represent the respondent in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at a facility if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 863, ss. 29, 30; 1987 (Reg. Sess., 1988), c. 1037, s. 117; 2000-144, s. 43.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

CASE NOTES

Cited in In re Royal, 128 N.C. App. 645, 495 S.E.2d 404 (1998).

§ 122C-286.1. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-286, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. The counsel provided for in G.S. 122C-286(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1985 (Reg. Sess., 1986), c. 863, s. 31; 2000-144, s. 44.)

Cross References. — For the Indigent Defense Services Act, see Chapter 7A, Subchapter IX, Article 39B.

§ 122C-287. Disposition.

The court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to himself or others, it shall order for a period not in excess of 180 days commitment to and treatment by an area authority or physician who is responsible for the management and supervision of the respondent's commitment and treatment.

(2) If the court finds that the respondent does not meet the commitment criteria set out in subdivision (1) of this subsection, the respondent

shall be discharged and the facility in which he was last treated so notified. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 8; c. 739, s. 2; 1979, c. 358, s. 26; c. 915, ss. 8, 15, 16; 1981, c. 537, s. 1; 1983, c. 380, s. 8; c. 638, s. 14; c. 864, s. 4; 1985, c. 589, s. 2.)

CASE NOTES

Only those persons found to be substance abusers and dangerous to themselves or others are entitled to the services of a facility. In re Royal, 128 N.C. App. 645, 495 S.E.2d 404 (1998).

§ 122C-288. Appeal.

Judgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General shall represent the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1979, c. 915, s. 19; 1985, c. 589, s. 2.)

Legal Periodicals. — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1049 (1981).

§ 122C-289. Duty of assigned counsel; discharge.

If the respondent is committed, assigned counsel remains responsible for the respondent's representation at the trial level until discharged by order of district court or until the respondent is otherwise unconditionally discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. (1973, c. 1408, s. 1; 1985, c. 589, s. 2; 2006-264, s. 61(b).)

§ 122C-290. Duties for follow-up on commitment order.

(a) The area authority or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24-hour facility.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The custody order is valid throughout the State. The law enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area authority or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area authority or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 32; 1987, c. 674, s. 2; c. 750; 2004-23, s. 2(c).)

§ 122C-291. Supplemental hearings.

(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated area authority or physician. Notice shall be provided in accordance with G.S. 122C-284(b). The procedures for the hearing shall follow G.S. 122C-286.

(b) At the supplemental hearing for a respondent who has moved or may move to another county, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent no longer meets the criteria for commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for commitment, it shall continue the commitment but shall designate an area authority or physician at the respondent's new residence to be responsible for the management or supervision of the respondent's commitment. The court shall order the respondent to appear for treatment at the address of the newly designated area authority or physician and shall order venue for further court proceedings under the commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the commitment has been supervised shall transfer the records regarding the commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the commitment has been supervised shall send a copy of the court's order directing the continuation of treatment under new supervision to the newly designated area authority or physician.

(c) At a supplemental hearing for a respondent to be held longer than 45 consecutive days in a 24-hour facility, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent continues to meet the criteria and that further treatment in the 24-hour facility is necessary, the court may authorize continued care in the facility for not more than 90 days, after which a rehearing for the purpose of determining the need for continued care in the 24-hour facility shall be held, or the court may order the respondent released from the 24-hour facility and continued on the commitment on an outpatient basis. If the court determines that the respondent no longer meets the criteria for commitment the respondent shall be released and his case dismissed.

(d) At any time during the term of commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing to the clerk of superior court. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria for commitment. The court may reissue or change the commitment order or discharge the respondent and dismiss the case. (1985, c. 589, s. 2.)

§ 122C-292. Rehearings.

(a) Fifteen days before the end of the initial or subsequent periods of commitment if the area authority or physician determines that the respondent continues to meet the criteria specified in G.S. 122C-283(d)(1), the clerk of superior court of the county where commitment is supervised shall be notified. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing. If the respondent no longer meets the criteria, the area authority or physician shall so notify the clerk who shall dismiss the case.

(b) Rehearings are governed by the same notice and procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-283(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated area authority or physician. If the respondent continues to meet the criteria of G.S. 122C-283(d)(1), the court may order commitment for additional periods not in excess of 365 days each. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 9; 1979, c. 915, ss. 9, 17; 1981, c. 537, ss. 2-4; 1983, c. 638, ss. 18-19; 864, s. 4; 1985, c. 589, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Actual Notice of Rehearing Is Required Absent Waiver or Consent to Nonservice. — See opinion of Attorney General to Mr. J. Laird Jacob, Jr., Broughton Hospital, 44 N.C.A.G. 33 (1974), rendered under former statutory provisions.

§ 122C-293. Release by area authority or physician.

The area authority or physician as designated in the order shall discharge a committed respondent unconditionally at any time he determines that the respondent no longer meets the criteria of G.S. 122C-283(d)(1). Notice of discharge and the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the commitment was ordered. (1973, c. 726, s. 1; c. 1408, s. 1; 1981, c. 537, s. 5; 1983, c. 383, s. 6; c. 638, s. 21; c. 864, s. 4; 1985, c. 589, s. 2.)

§ 122C-294. Local plan.

Each area authority shall develop a local plan with local law-enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of this Part. (1973, c. 1408, s. 1; 1977, c. 679, s. 8; 1979, c. 358, ss. 26, 27; 1985, c. 589, s. 2.)

§§ 122C-295 through 122C-300: Reserved for future codification purposes.

Part 9. Public Intoxication.

§ 122C-301. Assistance to an individual who is intoxicated in public; procedure for commitment to shelter or facility.

(a) An officer may assist an individual found intoxicated in a public place by taking any of the following actions:

(1) The officer may direct or transport the intoxicated individual home;

(2) The officer may direct or transport the intoxicated individual to the residence of another individual willing to accept him;

(3) If the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility;

(4) If the intoxicated individual is apparently in need of but apparently unable to provide for himself immediate medical care, the officer may direct or transport him to an area facility, hospital, or physician's office; or the officer may direct or transport the individual to any other appropriate health care facility; or

(5) If the intoxicated individual is apparently a substance abuser and is apparently dangerous to himself or others, the officer may proceed as provided in Part 8 of this Article.

(b) In providing the assistance authorized by subsection (a) of this section, the officer may use reasonable force to restrain the intoxicated individual if it appears necessary to protect himself, the intoxicated individual, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Part.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) of this section, the facility to which the intoxicated individual is taken may detain him only until he becomes sober or a maximum of 24 hours. The individual may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Any individual who has knowledge that a person assisted to a shelter or other facility under subdivisions (a)(3) or (a)(4) of this section is a substance abuser and is dangerous to himself or others may proceed as provided in Part 8 of this Article. (1977, 2nd Sess., c. 1134, s. 2; 1981, c. 519, s. 5; 1985, c. 589, s. 2.)

CASE NOTES

Governmental Unit Not Assuming Responsibility for Payment of Medical Care. — Former G.S. 122-65.11 did not suggest that the governmental unit employing an officer who acted pursuant to the statute assumed responsibility for payment for the medical care rendered to the intoxicated person. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

Limited Immunity in Dealing with Intoxicated Individuals. — When officers deal with publicly intoxicated individuals, the legislature has immunized them from civil and criminal liability only if the officers use reasonable measures under this section: such limited immunity would be unnecessary if an individual's intoxication always constituted contributory negligence. Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

No Exception to the General Public Duty Doctrine Created. — Neither G.S. 122C-2 nor this section expressly authorizes a private right of action for the breach of its terms or imposes an affirmative duty on an officer beyond the public duty doctrine. Lane v. City of Kinston, 142 N.C. App. 622, 544 S.E.2d 810, 2001 N.C. App. LEXIS 178 (2001).

Cited in Klassette ex rel. Klassette v. Mecklenburg County Area Mental Health, Mental Retardation & Substance Abuse Auth., 88 N.C. App. 495, 364 S.E.2d 179 (1988).

§ 122C-302. Cities and counties may employ officers to assist intoxicated individuals.

A city or county may employ officers to assist individuals who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public including the administration of first aid. An officer employed by a city or county to assist intoxicated individuals has the powers and duties set out in G.S. 122C-301 within the same territory in which criminal laws are enforced by law-enforcement officers of that city or county. (1977, 2nd Sess., c. 1134, s. 2; 1985, c. 589, s. 2.)

§ 122C-303. Use of jail for care for intoxicated individual.

In addition to the actions authorized by G.S. 122C-301(a), an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail. That action may be taken only if the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care and if no other facility is readily available to receive him. The officer and employees of the jail are exempt from liability as provided in G.S. 122C-301(b). The intoxicated individual may be detained at the jail only until he becomes sober or a maximum of 24 hours and may be released at any time to a relative or other individual willing to be responsible for his care. (1977, 2nd Sess., c. 1134, s. 3; 1985, c. 589, s. 2.)

CASE NOTES

Cited in Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994); State v. Hocutt, 177 N.C. App. 341, 628 S.E.2d 832, 2006 N.C. App. LEXIS 966 (2006).

§§ 122C-304 through 122C-310: Reserved for future codification purposes.

Part 10. Voluntary Admissions, Involuntary Commitments and Discharges, Inmates and Parolees, Department of Correction.

§ 122C-311. Individuals on parole.

Any individual who has been released from any correctional facility on parole is admitted, committed and discharged from facilities in accordance with the procedures specified in this Article for other individuals. (1959, c. 1002, s. 24; 1963, c. 1184, s. 28; 1973, c. 253, s. 4; 1985, c. 589, s. 2.)

§ 122C-312. Voluntary admissions and discharges of inmates of the Department of Correction.

Inmates in the custody of the Department of Correction may seek voluntary admission to State facilities for the mentally ill or substance abusers. The provisions of Part 2 of this Article shall apply except that an admission may be accomplished only when the Secretary and the Secretary of the Department of

Correction jointly agree to the inmate's request. When an inmate is admitted he shall be discharged in accordance with the provisions of Part 2 of this Article except that an inmate who is ready for discharge, but still under a term of incarceration, shall be discharged only to an official of the Department of Correction. The Department of Correction is responsible for the security and cost of transporting inmates to and from facilities under the provisions of this section. (1979, c. 547; 1985, c. 589, s. 2.)

Legal Periodicals. — For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

§ 122C-313. Inmate becoming mentally ill and dangerous to himself or others.

(a) An inmate who becomes mentally ill and dangerous to himself or others after incarceration in any facility operated by the Department of Correction in the State is processed in accordance with Part 7 of this Article, as modified by this section, except when the provisions of Part 7 are manifestly inappropriate. A staff psychiatrist or eligible psychologist of the correctional facility shall execute the affidavit required by G.S. 122C-261 and send it to the clerk of superior court of the county in which the correctional facility is located. Upon receipt of the affidavit, the clerk shall calendar a district court hearing and notify the respondent and his counsel as required by G.S. 122C-284(a). The hearing is conducted in a district courtroom. If the judge finds by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others, he shall order him transferred for treatment to a State facility designated by the Secretary. The judge shall not order outpatient commitment for an inmate-respondent.

(b) If the sentence of an inmate-respondent expires while he is committed to a State facility, he is considered in all respects as if he had been initially committed under Part 7 of this Article.

(c) If the sentence of an inmate-respondent has not expired, and if in the opinion of the attending physician of the State facility an inmate-respondent ceases to be mentally ill and dangerous to himself or others, he shall notify the Department of Correction which shall arrange for the inmate-respondent's return to a correctional facility.

(d) Special counsel at a State facility shall represent any inmate who becomes mentally ill and dangerous to himself or others while confined in a correctional facility in the same county, otherwise counsel is assigned in accordance with G.S. 122C-270(d).

(e) The Department of Correction is responsible for the security and cost of transporting inmates to and from State facilities under the provisions of this section. (1899, c. 1, s. 66; Rev., s. 4619; C.S., s. 6238; 1923, c. 165, s. 55; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c. 1232, s. 26; 1963, c. 1184, s. 27; 1965, c. 800, s. 13; 1973, c. 253, s. 3; c. 1433; 1977, c. 679, s. 8; 1979, c. 358, s. 27; c. 915, s. 11; 1985, c. 589, s. 2; c. 695, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Convict Committed to Hospital for Mentally Ill May Be Paroled from Department of Correction Commitment. — See opinion of Attorney General to Mr. Wade E. Brown, N.C. Board of Paroles, 41 N.C.A.G. 550 (1971), rendered under former statutory provisions.

§§ 122C-314 through 122C-320: Reserved for future codification purposes.

Part 11. Voluntary Admissions, Involuntary Commitments and Discharges, the Psychiatric Service of the University of North Carolina Hospitals at Chapel Hill.

§ 122C-321. Voluntary admissions and discharges.

Any individual in need of treatment for mental illness or substance abuse may seek voluntary admission to the psychiatric service of the University of North Carolina Hospitals at Chapel Hill. Procedures for admission and discharge shall be made in accordance with Parts 2 through 4 of this Article. The applicant may be admitted only upon the approval of the director of the psychiatric service or his designee. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2; 1973, c. 723, s. 3; c. 1084; 1985, c. 589, s. 2; 1989, c. 141, s. 14.)

§ 122C-322. Involuntary commitments.

(a) Except as otherwise specifically provided in this section references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the psychiatric service of the University of North Carolina Hospitals at Chapel Hill. The psychiatric service may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. However, no individual may be held at or committed to the psychiatric service without the prior approval of the director of the psychiatric service or his designee.

(b) Initial hearings, supplemental hearings, and rehearings may be held at the psychiatric service facility or at any place in Orange County where district court can be held under G.S. 7A-133. Legal counsel for the respondent at all hearings and rehearings shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d). (1977, c. 738, s. 1; 1981, c. 442; 1985, c. 589, s. 2; 1989, c. 141, s. 15.)

CASE NOTES

Those who are intoxicated but not disruptive may be assisted but not arrested. State v. Cooke, 49 N.C. App. 384, 271 S.E.2d 561 (1980), decided under former statutory provisions.

§§ 122C-323 through 122C-330: Reserved for future codification purposes.

Part 12. Voluntary Admissions, Involuntary Commitments and Discharges, Veterans Administration Facilities.

§ 122C-331. Voluntary admissions and discharges.

Veterans in need of treatment for mental illness or substance abuse may seek voluntary admission to a facility operated by the Veterans Administration. Procedures for admission and discharge shall be made in accordance with Parts 2 and 4 of this Article. The Veterans Administration may require additional procedures not inconsistent with these Parts. (1973, c. 1408, s. 1; 1985, c. 589, s. 2.)

§ 122C-332. Involuntary commitments.

(a) Except as otherwise specifically provided in this section, references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities, or private facilities shall include the facilities operated by the Veterans Administration. Veterans Administration facilities may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility and the availability of space shall be determined by the Veterans Administration in all cases before sending or committing a veteran-respondent.

(b) Initial hearings, supplemental hearings, and rehearings for veteran-respondents may be held at the facility or at the county courthouse in the county in which the facility is located, and counsel shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d). (1985, c. 589, s. 2.)

§ 122C-333. Order of another state.

The judgment or order of commitment by a court of competent jurisdiction of another state, committing a person to the Veterans Administration or another federal agency that is located in this State shall have the same force and effect on the committed person while in this State as in the jurisdiction of the court entering the judgment or making the order. The courts of the committing state shall retain jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person, and for determining the necessity for continuance of his restraint. Consent is given to the application of the law of the committing state on the authority of the chief officer of any facility of the Veterans Administration or of any institution operated in this State by any other federal agency to retain custody, transfer, parole, or discharge the committed person. (1985, c. 589, s. 2.)

§§ 122C-334 through 122C-340: Reserved for future codification purposes.

Part 13. Voluntary Admissions, Involuntary Commitment and Discharge of Non-State Residents and the Return of North Carolina Resident Clients.

§ 122C-341. Determination of residence.

It is the responsibility of the facility to determine if a client is not a resident of the State. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C.S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, s. 11; 1953, c. 256, s. 3; 1957, c. 1386; 1963, c. 1184, s. 1; 1973, c. 673, s. 13; 1985, c. 589, s. 2.)

§ 122C-342. Voluntary admissions and discharges.

A non-State resident may be admitted to and discharged from a facility on a voluntary basis in accordance with Parts 2 through 5 of this Article at his own expense. If the facility determines that the client should be returned to his own state the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply. (1899, c. 1, s. 16; Rev., s. 4584; C.S., s. 6210; 1945, c. 952, s. 33; 1947, c.

537, s. 18; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673, s. 13; 1985, c. 589, s. 2.)

§ 122C-343. Involuntary commitments.

Involuntary commitments of non-State residents are made under the provisions of Parts 6 through 8 of this Article. If after commitment to a 24-hour facility the facility determines that the respondent needs long-term care and should be returned to his state of residence, the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply. (1899, c. 1, s. 16; Rev., s. 4584; C.S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673, s. 13; 1985, c. 589, s. 2.)

§ 122C-344. Citizens of other countries.

In addition to the provisions of G.S. 122C-341 through G.S. 122C-343, if a 24-hour facility determines that a client is not a citizen of the United States, the facility shall notify the Governor of this State of the name of the client, the country and place of his residence in the country and other facts in the case as can be obtained, together with a copy of pertinent medical records. The Governor shall send the information to the nearest consular office of the committed foreign national, with the request that the consular office tell the minister resident or plenipotentiary of the country of which the client is alleged to be a citizen. (1899, c. 1, s. 16; Rev., s. 4585; C.S., s. 6211; 1963, c. 1184, s. 1; 1985, c. 589, s. 2; 1993, c. 561, s. 86(a).)

§ 122C-345. Return of a non-State resident client to his resident state.

(a) Except as provided in subsection (c) of this section, it is the responsibility of the director of a facility to arrange for the transfer of a client to his resident state. The cost of returning the client to his resident state is the responsibility of the client or his family.

(b) A non-State resident client of an area 24-hour facility may be transferred to a State facility in accordance with G.S. 122C-206 in order for the client to be returned to his resident state.

(c) A non-State resident client of a State facility may be returned to his resident state under procedures established under G.S. 122C-346 or G.S. 122C-361. The cost of returning a client to his resident state under this subsection shall be the responsibility of the State. (1899, c. 1, s. 16; Rev., s. 4584; C.S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, ss. 18, 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1971, c. 1140; 1973, c. 476, s. 133; c. 673, s. 13; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§ 122C-346. Authority of the Secretary to enter reciprocal agreements.

The Secretary may enter agreements with other states for the return of non-State resident clients to their resident state and for the return of North Carolina residents to North Carolina when under treatment in another state. (1947, c. 537, s. 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§ 122C-347. Return of North Carolina resident clients from other states.

North Carolina residents who are in treatment in another state may be returned to North Carolina either under an agreement authorized in G.S.

122C-346 or under the provisions of G.S. 122C-361. The cost of returning a North Carolina resident to this State is the responsibility of the sending state. Within 72 hours after admission in a State facility, a returned resident shall be evaluated. The returned resident may agree to a voluntary admission or may be released, or proceedings for an involuntary commitment under this Article may be initiated as necessary by the responsible professional in the facility. (1945, c. 952, s. 34; 1947, c. 537, s. 19; 1959, c. 1002, ss. 20, 21; 1963, c. 1184, s. 1; 1965, c. 800, s. 9; 1969, c. 982; 1973, c. 476, ss. 133, 138; c. 673, s. 13; 1985, c. 589, s. 2.)

§ 122C-348. Residency not affected.

(a) A nonresident of this State who is under care in a 24-hour facility in this State is not considered a resident. No length of time spent in this State while a client in a 24-hour facility is sufficient to make a nonresident a resident or entitled to care or treatment.

(b) A North Carolina resident who is under care and treatment in a 24-hour facility in another state shall retain his residency in North Carolina. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C.S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, ss. 11, 20; 1953, c. 256, s. 3; 1955, c. 887, s. 13; 1957, c. 1386; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1; 1973, c. 476, s. 133; c. 673, s. 13; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§§ 122C-349 through 122C-360: Reserved for future codification purposes.

Part 14. Interstate Compact on Mental Health.

§ 122C-361. Compact entered into; form of Compact.

The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

ARTICLE I.

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this Compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in term of such welfare.

ARTICLE II.

As used in this Compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the Compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the Compact or to which it is contemplated that a patient may be so sent.
(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.
(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this Compact.
(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.
(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.
(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.
(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III.

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this Compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this Compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV.

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities have responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V.

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a way reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI.

The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this Compact through any and all states party to this Compact, without interference.

ARTICLE VII.

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this Compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this Compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this Compact.

(e) Nothing in this Compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII.

(a) Nothing in this Compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX.

(a) No provision of this Compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this Compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X.

(a) Each party state shall appoint a "Compact Administrator" who, on behalf of his state, shall act as general coordinator of activities under the Compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the Compact by his state either in the capacity of sending or receiving state. The Compact Administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the Compact or any patient processed thereunder.

(b) The Compact Administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this Compact.

ARTICLE XI.

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this Compact.

ARTICLE XII.

This Compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII.

(a) A state party to this Compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and Compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the Compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1959, c. 1003, s. 1; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

OPINIONS OF ATTORNEY GENERAL

A Patient Found Not Guilty of a Crime by Reason of Insanity May Not Be the Subject of Interstate Transfer. — See opinion of Attorney General to Dr. Eugene A. Hargrove, Commissioner of Mental Health, 40 N.C.A.G. 388 (1970), rendered under former statutory provisions.

Transfer of a patient involuntarily committed to another state not having equivalent due process safeguards in the form of mandatory, periodic judicial rehearings is not prohibited, although the existence of adequate due process safeguards in the receiving state should be an important factor for consideration in determining the appropriateness of transfer of the patient. Opinion of Attorney General to Mr. John L. Pinnix, 45 N.C.A.G. 27 (1975), rendered under former statutory provisions.

§ 122C-362. Compact Administrator.

Pursuant to the Compact, the Secretary is the Compact Administrator and, acting jointly with like officers of other party states, may adopt rules to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact, of any supplementary agreement, or agreements entered into by this State. (1959, c. 1003, s. 2; 1963, c. 1184, s. 12; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

§ 122C-363. Supplementary agreements.

The Compact Administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the Compact. In the event that these supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall be effective until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of this service. (1959, c. 1003, s. 3; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

§ 122C-364. Financial arrangements.

The Compact Administrator, with the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into under it. (1959, c. 1003, s. 4; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

§ 122C-365. Transfer of clients.

The Compact Administrator is directed to consult with the immediate family or legally responsible person of any proposed transferee. (1959, c. 1003, s. 5; 1963, c. 1184, ss. 12, 38; 1985, c. 589, s. 2.)

§ 122C-366. Transmittal of copies of Part.

Copies of this Part shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the Council of State Governments. (1959, c. 1003, s. 6; 1963, c. 1184, s. 12; 1985, c. 589, s. 2.)

§§ 122C-367 through 122C-400: Reserved for future codification purposes.

Article 6.

Special Provisions.

Part 1. Camp Butner and Community of Butner.

§ 122C-401. Use of Camp Butner Hospital authorized.

The State may use the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of modern up-to-date facilities for the care and treatment of citizens of this State. (1947, c. 789, s. 2; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

Editor's Note. — Session Laws 1999-140, s. 1, provides that the Camp Butner reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Health and Human Services. There is a resident population in the Community of Butner that does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The citizens of the Camp Butner reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner with regard to the provision of public services and planning for the future of the Camp Butner reservation.

Session Laws 2006-159, ss. 1 through 3, provide: "1. Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to,in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') owns a water and sewer system (hereinafter 'System') that it has long operated pursuant to G.S. 122C-407 for the benefit of the Butner Reservation, the State institutions located in or near the Butner Reservation, adjacent areas of Granville County, and certain federal correctional institutions.

"(3) The Department has determined that it is in the best interests of the Department, its clients, and the State of North Carolina for the System to be operated as a regional water and sewer system for the benefit of the Butner Reservation, the City of Creedmoor (hereinafter 'Creedmoor'), the Town of Stem (hereinafter 'Stem'), adjacent areas of Granville County, and the State and federal institutions located nearby.

"(4) The Secretary pursuant to the authority vested in her by G.S. 122C-407 entered into a Memorandum of Understanding (hereinafter 'MOU') with the South Granville Water and Sewer Authority, a water and sewer authority organized under and by virtue of Article 1 of Chapter 162A of the General Statutes (hereinafter 'SGWASA') pursuant to which SGWASA, effective January 1, 2006, manages and operates the System.

"(5) The customers of the System have paid for water and sewer over the years the Department has operated the System, and those payments at times have generated surpluses that are held by the Department or on behalf of the Department by the State Treasurer for use for the benefit of the System.

"(6) It is in the best interests of the Department, the southern portion of Granville County including the Butner Reservation, Stem, and Creedmoor, and the State for SGWASA to own and operate the System for the benefit of all interested parties and that certain assets be transferred to SGWASA.

"2.(a) The Governor shall convey on or before January 1, 2007, or as soon thereafter as all conditions set forth herein are met, to SGWASA for the consideration set forth herein all right, title, and interest in and to all of the property, real, personal, and mixed, tangible and intangible, comprising the System owned by the State of North Carolina which is currently managed by SGWASA pursuant to the MOU; provided, however, that SGWASA, prior to said transfer, shall make the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by the State that is secured by the System or by the revenues of the System and which is outstanding as of the date of transfer. A schedule of said assets is on file with the Secretary and with the Executive Director of SGWASA.

"(b) In order to provide SGWASA with a reserve for operations and maintenance expenses and extraordinary repairs and replacements, the Department shall transfer to SGWASA on or before September 1, 2007, from the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), the sum of two million sixty-nine thousand four hundred thirty-two dollars and fifty cents ($2,069,432.50) which is equal to one-half of one year's total operating expenses of the System, as shown on the Town of Butner Waterand Sewer System Financial Statement Audit Report for the Year Ended June 30, 2005 (hereinafter the 'Audit Report'). If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the remainder of the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), including all interest and returns thereon, and all Capital Improvement Funds held by the Department for the Town of Butner Enterprise in the North Carolina General Ledger System (BD 725) not otherwise restricted by statute or otherwise obligated for the payment of existing debts, including all interest and returns thereon, shall be transferred by the Department to such successor municipality.

"(c) Except as hereinafter provided, SGWASA shall continue to pay to the Department a monthly sum to be used by the Department to support the operations of the Butner Reservation, set at a baseline of sixty-three thousand nine hundred fifty-seven dollars and seventy-five cents ($63,957.75) for fiscal year 2005-2006, which sum shall be adjusted annually on July 1 to reflect the cost of salary and benefit changes granted to State employees by an act of the General Assembly or by action of the Office of State Personnel; any increases and adjustments required by law for Social Security, retirement rate increases, or longevity; and allowable inflationary cost increases for all operations costs as determined by the North Carolina Office of State Budget and Management each budget cycle and communicated to State agencies for application. This payment shall continue until such date as the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina. If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, SGWASA shall pay to such municipal corporation the sum of forty-one thousand six hundred sixty-six dollars and sixty-seven cents ($41,666.67) per month for a period of 240 months from the date of said incorporation. Notwithstanding the foregoing, any payments pursuant to this section to the Department or a municipal corporation incorporated hereafter which assumes the majority of the functions of the Butner Reservation may, to the extent provided in any trust agreement, trust indenture, resolution, order, ordinance, or similar instrument entered or adopted by SGWASA in connection with the issuance of bonds by SGWASA, be made subordinated to the payment of current expenses of the System, the funding of reserves, and the payment of debt service on any indebtedness incurred by SGWASA for the improvement, expansion, and maintenance of the System or to make a payment to the State to retire bonds previously issued by the State for such purpose. For purposes of this section, 'payment of debt service on indebtedness' includes the payments required under any financial instruments entered into by SGWASA in connection with the indebtedness, such as payments under interest rate swap agreements, reimbursement agreements, standby bond purchase agreements, or similar instruments entered into by SGWASA in connection with its bonds.

"(d) Any conveyance of the assets, real, personal, and mixed, transferred pursuant to the provisions of this section shall include a provision that the assets so transferred may revert to the State if SGWASA dissolves, becomes insolvent, or is otherwise unable to meet its obligations as they become due. Such reversion shall be conditioned upon the State making the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA to be outstanding following the reversion of the assets to the State. If, at such time, the primary functions of the department with respect to the Butner Reservation have been assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the assets that otherwise would revert to the State pursuant to this section shall vest in such municipality on the same terms and conditions as if the assets were reverting to the state (including that arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA and to be outstanding following the reversion of the assets to the State be made as a condition to such reversion).

"3. The transfer of the System to SGWASA pursuant to the provisions of this act shall be exempt from the requirements of Article 7, Chapter 146 of the General Statutes. The conveyance of property under this act shall comply with the provisions of Article 16, Chapter 146; provided, however, that the conveyance will be exempt from the provisions of G.S. 146-74. The provisions of this act shall be exempt from all statutes concerning in any way the disposition of personal property owned by the State of North Carolina or any department or agency thereof."

Session Laws 2007-269, s. 1, provides: "Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to, in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') has long operated the Town of Butner with the Secretary or the Secretary's designee acting as the de facto mayor of the Town of Butner.

"(3) The operation of the Town of Butner is not a core function of the Department, and the Department's mission would not be negatively impacted by the incorporation of the Town of Butner.

"(4) The utilities were transferred to the South Granville Water and Sewer Authority ('SGWASA') pursuant to the provisions of Session Law 2006-159 which also provides that SGWASA shall pay to the Department a sum, indexed to inflation, as set out in that legislation to support the operations of the Butner Reservation including the Town of Butner.

"(5) The citizens of the Town of Butner currently also pay a tax authorized by Section 1 of Chapter 830 of the 1983 Session Laws of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property to the Butner Public Safety Division of the Department of Crime Control and Public Safety.

"(6) The customers of the utility have paid for water and sewer over the years, and those payments have also financed the operations of the Town of Butner.

"(7) Certain personal property has been purchased by the Department for use in operating the Butner Reservation and that personal property traditionally used primarily for the benefit of the portion of the Butner Reservation to be incorporated should be transferred by the State to the newly incorporated Town of Butner."

Session Laws 2007-269, s. 1.1, provides the charter for the newly incorporated Town of Butner.

Session Laws 2007-269, s. 2, provides: "The incorporation of the Town of Butner by Section 1 of this act and the remaining provisions of this act satisfy the requirement of Section 2(c) of Session Law 2006-159 that the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina." For the full text of Session Laws 2006-159, s. 2, see the preceding Editor's notes under this section.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

§ 122C-402. Application of State highway and motor vehicle laws at State institutions on Camp Butner reservation.

The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, and driveways on the Camp Butner reservation that are on the grounds of any State facility or any State institution operated by the Department or by the Department of Correction. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on these streets, alleys, or driveways shall upon conviction be punished as prescribed in that Chapter. This section does not interfere with the ownership and control of the streets, alleys, and driveways on the grounds as is now vested by law in the Department. (1949, c. 71, s. 2; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

§ 122C-403. Secretary's authority over Camp Butner reservation.

The Secretary shall administer the Camp Butner reservation except (i) those areas within the municipal boundaries of the Town of Butner and (ii) that portion of the Town of Butner's extraterritorial jurisdiction consisting of lands not owned by the State of North Carolina. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

(1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.

(2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.

(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3C, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply, but the Secretary shall give the mayor of the Town of Butner at least 14 days' advance written notice of any proposed zoning change. The Secretary may designate Advisory establish a board to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, Advisory that board shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388.

(4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361.

(5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.

(6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.

(7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.

(8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.

(8a) Repealed by Session Laws 2007-269, s. 4. For effective date, see editor's note.

(9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Secretary's designee.

(9a) Repealed by Session Laws 2007-269, s. 4. For effective date, see editor's note.

(10) Adopt rules to carry out the purposes of this Article. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 1987, c. 536, s. 2; 1995 (Reg. Sess., 1996), c. 667, s. 3; 1997-59, s. 5; 1997-443, s. 11A.118(a); 1999-140, s. 4; 2007-269, s. 4.)

Editor's Note. — Session Laws 1987, c. 536, which amended this section, in s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Session Laws 1999-140, s. 4, amended this section effective when a majority of the members of the Butner Advisory Council created pursuant to G.S. 122C-413 (now repealed) as enacted by Session Laws 1999-140 have been elected and qualified. G.S. 122C-413 (now repealed) was precleared and, in November 2003 elections for the Council were held.

This section was amended by Session Laws 2007-269, s. 4, in the coded bill drafting format provided by G.S. 120-20.1. In the next-to-last sentence in subdivision (3), the act struck through "the Butner" but failed to strike through "designate," which immediately preceded it. In the same sentence, the act also struck through "Council" but failed to strike through "Advisory," which immediately preceded it. In the last sentence, the act struck through "the Butner" but failed to strike through "Advisory," which immediately followed it. The next-to-last and last sentences have been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 [now repealed] may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

G.S. 122C-413 and 122C-413.1, referred to in this section, were repealed by Session Laws 2007-269, s. 10. For effective date of repeal, see the Editor's note under G.S. 122C-413.

OPINIONS OF ATTORNEY GENERAL

Duties of the Planning Council. — Until there is a vacancy in the position of Town Manager, the Planning Council is not required to submit three names to the Secretary. If the Planning Council were required to submit names while the position is filled, it would have the de facto power to fire the current Town Manager, a result which is clearly inconsistent with the authority and discretion given to the Secretary. See opinion of Attorney General to R. Marcus Lodge General Counsel Department of Health and Human Services, 1997 N.C.A.G. 64 (11/4/97).

§ 122C-404: Repealed by Session Laws 1995 (Regular Session, 1996), c. 667, s. 4.

Editor's Note. — Session Laws 1987, c. 536, which amended this section, in s. 6 provided that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

§ 122C-405. Procedure applicable to rules.

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner Reservation, except those areas within the municipal boundaries of the Town of Butner and that portion of the Town of Butner's extraterritorial jurisdiction consisting of lands not owned by the State of North Carolina. If a public hearing is required before the adoption of a rule, Advisory the Secretary shall designate one or more employees of the Department to conduct the hearing. The Butner Town Council shall receive at least 14 days' advance written notice of any public hearing with all correspondence concerning such public hearings to be directed to the mayor of the Town of Butner and sent by certified mail, return receipt requested, or equivalent delivery service to Butner Town Hall. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6; 1985, c. 589, s. 2; 1987, c. 536, s. 4; c. 720, s. 3; 1995 (Reg. Sess., 1996), c. 667, s. 5; 1997-59, s. 6; 1999-140, s. 5; 2007-269, s. 5.)

Editor's Note. — Session Laws 1987, c. 536, which amended this section, in s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

Session Laws 1999-140, s. 5, amended this section effective when a majority of the members of the Butner Advisory Council created pursuant to G.S. 122C-413 (now repealed) as enacted by Session Laws 1999-140 have been elected and qualified. G.S. 122C-413 (now repealed) was precleared and, in November 2003 elections for the Council were held.

This section was amended by Session Laws 2007-269, s. 5, in the coded bill drafting format provided by G.S. 120-20.1. In the second sentence of the second paragraph, the act struck through "the Butner" but failed to strike through "Advisory," which immediately followed it. The second sentence of the second paragraph is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 [now repealed] may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

§ 122C-406. Violations made misdemeanor.

A person who violates an ordinance or rule adopted under this Part is guilty of a Class 3 misdemeanor. (1949, c. 71, s. 5; 1985, c. 589, s. 2; 1993, c. 539, s. 927; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 122C-407. Water and sewer system.

(a) The Department may acquire, construct, establish, enlarge, maintain, operate, and contract for the operation of a water supply and distribution system and a sewage collection and disposal system for the Camp Butner Reservation, and may enter into such contracts, memoranda of understanding, and other agreements with other persons or entities, including, but not limited to, local governments, authorities, and private enterprises, reasonably necessary to extend or otherwise provide water and sewer service to any portion of the Camp Butner Reservation.

(b) Those things authorized by subsection (a) of this section may be operated for the benefit of persons and property within the Camp Butner reservation and areas outside the reservation within reasonable limitations specifically including any sanitary district, water and sewer authority, county water and sewer district, or municipality in Durham or Granville Counties.

(c) The Secretary may fix and enforce water and sewer rates and charges in accordance with G.S. 160A-314 as if it were a city. (1985, c. 589, s. 2; 2007-269, s. 6.)

Editor's Note. — Session Laws 2000-81, ss. 1-8, effective July 5, 2000, authorizes the issuance of state revenue bonds, not to exceed $40,000,000, to finance improvements to the water and sewer system for the Community of Butner and Camp Butner reservation. Specifically, the bonds are for paying the costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, and extension of the water supply and distribution system and sewage collection and disposal system and certain costs of issuance of the bonds. The bonds are to be issued in compliance with the State and Local Government Revenue Bond Act, pursuant to an order adopted by the Council of State under G.S. 159-88, and are to be sold by the Local Government Commission pursuant to the provisions of Article 7 of Chapter 159. The bonds are tax exempt, excepting estate, inheritance, or gift taxes, income taxes on the gain from transfer of securities, and franchise taxes. Section 7 of the act provides that the act is supplemental and additional to powers conferred by other laws. It, being necessary for the health and welfare of the people of the State, is to be liberally construed. Section 7(d) contains a severability clause.

Session Laws 2006-159, ss. 1 through 3, provide: "1. Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to,in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') owns a water and sewer system (hereinafter 'System') that it has long operated pursuant to G.S. 122C-407 for the benefit of the Butner Reservation, the State institutions located in or near the Butner Reservation, adjacent areas of Granville County, and certain federal correctional institutions.

"(3) The Department has determined that it is in the best interests of the Department, its clients, and the State of North Carolina for the System to be operated as a regional water and sewer system for the benefit of the Butner Reservation, the City of Creedmoor (hereinafter 'Creedmoor'), the Town of Stem (hereinafter 'Stem'), adjacent areas of Granville County, and the State and federal institutions located nearby.

"(4) The Secretary pursuant to the authority vested in her by G.S. 122C-407 entered into a Memorandum of Understanding (hereinafter 'MOU') with the South Granville Water and Sewer Authority, a water and sewer authority organized under and by virtue of Article 1 of Chapter 162A of the General Statutes (hereinafter 'SGWASA') pursuant to which SGWASA, effective January 1, 2006, manages and operates the System.

"(5) The customers of the System have paid for water and sewer over the years the Department has operated the System, and those payments at times have generated surpluses that are held by the Department or on behalf of the Department by the State Treasurer for use for the benefit of the System.

"(6) It is in the best interests of the Department, the southern portion of Granville County including the Butner Reservation, Stem, and Creedmoor, and the State for SGWASA to own and operate the System for the benefit of all interested parties and that certain assets be transferred to SGWASA.

"2.(a) The Governor shall convey on or before January 1, 2007, or as soon thereafter as all conditions set forth herein are met, to SGWASA for the consideration set forth herein all right, title, and interest in and to all of the property, real, personal, and mixed, tangible and intangible, comprising the System owned by the State of North Carolina which is currently managed by SGWASA pursuant to the MOU; provided, however, that SGWASA, prior to said transfer, shall make the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by the State that is secured by the System or by the revenues of the System and which is outstanding as of the date of transfer. A schedule of said assets is on file with the Secretary and with the Executive Director of SGWASA.

"(b) In order to provide SGWASA with a reserve for operations and maintenance expenses and extraordinary repairs and replacements, the Department shall transfer to SGWASA on or before September 1, 2007, from the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), the sum of two million sixty-nine thousand four hundred thirty-two dollars and fifty cents ($2,069,432.50) which is equal to one-half of one year's total operating expenses of the System, as shown on the Town of Butner Waterand Sewer System Financial Statement Audit Report for the Year Ended June 30, 2005 (hereinafter the 'Audit Report'). If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the remainder of the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), including all interest and returns thereon, and all Capital Improvement Funds held by the Department for the Town of Butner Enterprise in the North Carolina General Ledger System (BD 725) not otherwise restricted by statute or otherwise obligated for the payment of existing debts, including all interest and returns thereon, shall be transferred by the Department to such successor municipality.

"(c) Except as hereinafter provided, SGWASA shall continue to pay to the Department a monthly sum to be used by the Department to support the operations of the Butner Reservation, set at a baseline of sixty-three thousand nine hundred fifty-seven dollars and seventy-five cents ($63,957.75) for fiscal year 2005-2006, which sum shall be adjusted annually on July 1 to reflect the cost of salary and benefit changes granted to State employees by an act of the General Assembly or by action of the Office of State Personnel; any increases and adjustments required by law for Social Security, retirement rate increases, or longevity; and allowable inflationary cost increases for all operations costs as determined by the North Carolina Office of State Budget and Management each budget cycle and communicated to State agencies for application. This payment shall continue until such date as the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina. If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, SGWASA shall pay to such municipal corporation the sum of forty-one thousand six hundred sixty-six dollars and sixty-seven cents ($41,666.67) per month for a period of 240 months from the date of said incorporation. Notwithstanding the foregoing, any payments pursuant to this section to the Department or a municipal corporation incorporated hereafter which assumes the majority of the functions of the Butner Reservation may, to the extent provided in any trust agreement, trust indenture, resolution, order, ordinance, or similar instrument entered or adopted by SGWASA in connection with the issuance of bonds by SGWASA, be made subordinated to the payment of current expenses of the System, the funding of reserves, and the payment of debt service on any indebtedness incurred by SGWASA for the improvement, expansion, and maintenance of the System or to make a payment to the State to retire bonds previously issued by the State for such purpose. For purposes of this section, 'payment of debt service on indebtedness' includes the payments required under any financial instruments entered into by SGWASA in connection with the indebtedness, such as payments under interest rate swap agreements, reimbursement agreements, standby bond purchase agreements, or similar instruments entered into by SGWASA in connection with its bonds.

"(d) Any conveyance of the assets, real, personal, and mixed, transferred pursuant to the provisions of this section shall include a provision that the assets so transferred may revert to the State if SGWASA dissolves, becomes insolvent, or is otherwise unable to meet its obligations as they become due. Such reversion shall be conditioned upon the State making the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA to be outstanding following the reversion of the assets to the State. If, at such time, the primary functions of the department with respect to the Butner Reservation have been assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the assets that otherwise would revert to the State pursuant to this section shall vest in such municipality on the same terms and conditions as if the assets were reverting to the state (including that arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA and to be outstanding following the reversion of the assets to the State be made as a condition to such reversion).

"3. The transfer of the System to SGWASA pursuant to the provisions of this act shall be exempt from the requirements of Article 7, Chapter 146 of the General Statutes. The conveyance of property under this act shall comply with the provisions of Article 16, Chapter 146; provided, however, that the conveyance will be exempt from the provisions of G.S. 146-74. The provisions of this act shall be exempt from all statutes concerning in any way the disposition of personal property owned by the State of North Carolina or any department or agency thereof."

Session Laws 2007-269, s. 2, provides: "The incorporation of the Town of Butner by Section 1 of this act and the remaining provisions of this act satisfy the requirement of Section 2(c) of Session Law 2006-159 that the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina." For the full text of Session Laws 2006-159, s. 2, see the preceding Editor's note.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 [now repealed] may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.

(a) The Secretary of Crime Control and Public Safety may employ special police officers for the territory of the Butner Reservation. The Secretary of Crime Control and Public Safety shall contract with the Town of Butner to provide fire and police protection to those areas within the incorporated limits of the Town of Butner. The territorial jurisdiction of these officers shall consist of the property shown on a map produced May 20, 2003, by the Information Systems Division of the North Carolina General Assembly and kept on file in the office of the Butner Town Manager and in the office of Director of the Butner Public Safety Division of the Department of Crime Control and Public Safety and such additional areas which are within the incorporated limits of the Town of Butner as shown on a map to be kept in the office of the Butner Town Manager and in the office of Director of the Butner Public Safety Division of the Department of Crime Control and Public Safety. The Secretary of Crime Control and Public Safety may organize these special police officers into a public safety department for that territory and may establish it as a division within that principal department as permitted by Chapter 143B of the General Statutes.

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina, the ordinances of the Town of Butner, and any rule applicable to the Butner Reservation adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 80, 82 and 83 of Chapter 58 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subsection (a) of this section to or from the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) The contract between the Town of Butner and the Department of Crime Control and Public Safety shall provide that:

(1) The Butner Public Safety Division of the Department of Crime Control and Public Safety shall provide the same level of service to the incorporated area known as the Town of Butner as provided to those areas of the Town of Butner served by Butner Public Safety on January 1, 2007;

(2) The Town of Butner shall pay to the State Treasurer, on or before May 1 of each year, for deposit in the General Fund an amount equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5, 2007, in the area incorporated as the Town of Butner effective July 1, 2007, assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area increased effective July 1 of each year by the increase in the percentage change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, for the southeast region, all urban consumers (or if that data shall no longer be available, the closest equivalent substitute then in publication by the United States Government) for the previous year ended December 31st

(3) If additional areas are added to the incorporated limits of the Town of Butner, the payments due under the contract shall be increased by an amount equal to the amount that actually would have been collected from real and personal property ad valorem taxes due January 5 of the year of incorporation of such area if said incorporation occurs on or before May 1 or the amount collected for the preceding year if said incorporation occurs prior to May 1 of the then current year assuming a tax of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property in said area and increased yearly as set out above; and

(4) The Town of Butner and the Department of Crime Control and Public Safety may by mutual agreement modify the amounts required to be paid by the Town of Butner pursuant to subdivisions (2) and (3) of this subsection. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 491, s. 1; c. 964, s. 19; c. 1127, s. 49; 1983, c. 761, s. 165; 1985, c. 589, s. 2; 1987, c. 827, s. 246; 1989, c. 141, s. 16; 2003-346, s. 2; 2007-269, s. 7.)

Cross References. — As to cooperation between law-enforcement agencies, see G.S. 160A-288. As to assistance to State law-enforcement agencies, see G.S. 160A-288.2.

State Government Reorganization. — Session Laws 1981, c. 491, s. 2, provided: "The Butner Public Safety Department is transferred by a type I transfer, as defined in G.S. 143A-6, from the Department of Human Resources to the Department of Crime Control and Public Safety. All transfers of personnel, equipment, appropriations, and functions shall be completed by September 1, 1981, but the Secretary of Crime Control and Public Safety shall have authority over the personnel, equipment, appropriations, and functions transferred by this section upon the effective date of this act [July 1, 1981]."

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the

United States Department of Justice by letter dated October 1, 2007.

G.S. 122C-413, referred to in subsection (a), was repealed by Session Laws 2007-269, s. 10. For effective date of repeal, see Editor's note under G.S. 122C-413.

§ 122C-409. Community of Butner comprehensive emergency management plan.

The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in G.S. 166A-4(2) for the Camp Butner Reservation, and the Town of Butner. (1985, c. 589, s. 2; 2007-269, s. 8.)

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

§ 122C-410. Authority of county or city over Camp Butner Reservation; zoning jurisdiction by Town of Butner over State lands.

(a) A municipality other than the Town of Butner may not annex territory extending into or extend its extraterritorial jurisdiction into the Camp Butner reservation without written approval from the Secretary and the Butner Town Council of each proposed annexation or extension. The Town of Butner may not annex territory extending into or extend its extraterritorial jurisdiction into those portions of the Camp Butner Reservation owned by the State of North Carolina without written approval from the Secretary of each proposed annexation or extension. The procedures, if any, for withdrawing approval granted by the Secretary to an annexation or extension of extraterritorial jurisdiction shall be stated in the notice of approval.

(b) A county ordinance may apply in part or all of the Camp Butner reservation (other than areas within the Town of Butner) if the Secretary gives written approval of the ordinance, except that ordinances adopted by a county under Article 18 of Chapter 153A of the General Statutes may not apply in the extraterritorial jurisdiction of the Town of Butner without approval of the Butner Town Council. The Secretary may withdraw approval of a county ordinance by giving written notification, by certified mail, return receipt requested, to the county. A county ordinance ceases to be effective in the Camp Butner reservation 30 days after the county receives the written notice of the withdrawal of approval. This section does not enhance or diminish the authority of a county to enact ordinances applicable to the Town of Butner and its extraterritorial jurisdiction.

(c) Notwithstanding any other provision of this Article, no portion of the lands owned by the State as of September 1, 2007, which are located in the extraterritorial jurisdiction or the incorporated limits of the Town of Butner shall be subject to any of the powers granted to the Town of Butner pursuant to Article 19 of Chapter 160A of the General Statutes except as to property no longer owned by the State. If any portion of such property owned by the State of North Carolina as of September 1, 2007, is no longer owned by the State, the Town of Butner may exercise all legal authority granted to the Town pursuant to the terms of its charter or by Article 19 of Chapter 160A of the General Statutes and may do so by ordinances adopted prior to the actual date of transfer. Before the State shall dispose of any property inside the incorporated limits of the Town of Butner or any of that property currently under the control of the North Carolina Department of Health and Human Services or the North Carolina Department of Agriculture and Consumer Services within the extra-territorial jurisdiction of the Town of Butner, southeast of Old Highway 75, northeast of Central Avenue, southwest of 33rdStreet, and northwest of "G" Street, by sale or lease for any use not directly associated with a State function, the Town of Butner shall first be given the right of first refusal to purchase said property at fair market value as determined by the average of the value of said property as determined by a qualified appraiser selected by the Secretary and a qualified appraiser selected by the Town of Butner. (1987, c. 536, s. 5; 2007-269, s. 9.)

Editor's Note. — Session Laws 1987, c. 536, which enacted this section, in s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation. The act was ratified July 2, 1987.

Session Laws 1983, c. 830, s. 1, as amended by 2003-346, s. 3, as amended by Session Laws 2005-276, s. 43.3, as amended by Session Laws 2006-4, s. 1, and as amended by Session Laws 2007-269, s. 14, provides: "(a) The territorial jurisdiction of the Butner Police and Fire Protection district shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district, provided, however, that those portions of said lands within the corporate limits of the Town of Butner are removed from the Butner Police and Fire Protection District for the purposes hereof.

"(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durhamand Granville Counties shall annually collect a tax of twenty-five cents (25) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund.

"(c) As long as G.S. 122C-410 prevents annexation by any municipality of any territory within the Camp Butner reservation without written approval of the Secretary of Health and Human Services, no municipality may annex under Article 4A of Chapter 160A of the General Statutes any part of the Lyons Station Sanitary District." Preclearance was received for S.L. 2003-346 by letter to Gary O. Bartlett from Joseph Rich, dated October 6, 2003.

Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71."

Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

Session Laws 2007-269, s. 14.3, provides: "Section 14 of this act removes the territory within the corporate limits of the Town of Butner from the Butner Police and Fire Protection District provided by Section 1 of Chapter 830 of the 1983 Session Laws, as amended. Since this act will become effective after July 1, 2007, with respect to taxes on property located within the corporate limits, for taxes levied for the 2007-2008 fiscal year, if the incorporation becomes effective, Granville County shall remit to the Town of Butner rather than to the State General Fund the taxes collected for that district on properties located within the corporate limits. Notwithstanding the previous sentence, if Granville County does not bill the Butner Police and Fire Protection District tax for fiscal year 2007-2008 on properties located within the proposed corporate limits until either the incorporation is either precleared or rejected under Section 5, those taxes are released or refunded if the incorporation is precleared, or shall be billed if the incorporation is rejected.

§ 122C-411. Fire protection contracts.

The Department of Crime Control and Public Safety may contract with industries in the vicinity of Butner to provide fire protection to those industries. Those contracts shall provide for a payment by any contracting industry calculated on the basis of twenty cents (20¢) per one hundred dollars ($100.00) of assessed valuation. (1987, c. 845, s. 1.)

§ 122C-411.1: Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 21.4.

Editor's Note. — This section, regarding Butner public safety fees, was enacted by Session Laws 1995 (Reg. Sess., 1996), c. 667, s. 6, effective June 21, 1996, and repealed by Session Laws 1996, Second Extra Session, c. 18, s. 21.4, effective June 21, 1996. Because of the repeal, the section is not set out.

Part 1A. Butner Planning Council.

§§ 122C-412 through 122C-412.2: Repealed.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 667, s. 1, provides: "The General Assembly finds that the Camp Butner Reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Human Resources. The General Assembly finds that there is a resident population in the Community of Butner that, because of the unique relationship between the State of North Carolina and cities and counties, as provided in G.S. 122C-410, does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The General Assembly finds that the citizens of the Camp Butner Reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner in dealing with the State of North Carolina through the Department of Human Resources with regard to the provision of public services and planning for the future of the Camp Butner Reservation."

Session Laws 1999-140, s. 7, provides for the repeal of this Part when a majority of the members of the Butner Advisory Council created pursuant to G.S. 122C-413 (now repealed) as enacted by Session Laws 1999-140 have been elected and qualified. Elections were held in November 2003.

Part 1B. Butner Advisory Council.

§§ 122C-413, 122C-413.1: Repealed by Session Laws 2007-269, s. 10. For effective date, see Editor's note.

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

Session Laws 1983, c. 830, s. 1, as amended by 2003-346, s. 3, as amended by Session Laws 2005-276, s. 43.3, as amended by Session Laws 2006-4, s. 1, and as amended by Session Laws 2007-269, s. 14, provides: "(a) The territorial jurisdiction of the Butner Police and Fire Protection district shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district, provided, however, that those portions of said lands within the corporate limits of the Town of Butner are removed from the Butner Police and Fire Protection District for the purposes hereof.

"(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durhamand Granville Counties shall annually collect a tax of twenty-five cents (25) per one hundred dollars ($100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund.

"(c) As long as G.S. 122C-410 prevents annexation by any municipality of any territory within the Camp Butner reservation without written approval of the Secretary of Health and Human Services, no municipality may annex under Article 4A of Chapter 160A of the General Statutes any part of the Lyons Station Sanitary District."

Session Laws 1999-140, s. 1, provides that the Camp Butner reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Health and Human Services. There is a resident population in the Community of Butner that does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The citizens of the Camp Butner reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner with regard to the provision of public services and planning for the future of the Camp Butner reservation.

Session Laws 2007-269, s. 14.3, provides: "Section 14 of this act removes the territory within the corporate limits of the Town of Butner from the Butner Police and Fire Protection District provided by Section 1 of Chapter 830 of the 1983 Session Laws, as amended. Since this act will become effective after July 1, 2007, with respect to taxes on property located within the corporate limits, for taxes levied for the 2007-2008 fiscal year, if the incorporation becomes effective, Granville County shall remit to the Town of Butner rather than to the State General Fund the taxes collected for that district on properties located within the corporate limits. Notwithstanding the previous sentence, if Granville County does not bill the Butner Police and Fire Protection District tax for fiscal year 2007-2008 on properties located within the proposed corporate limits until either the incorporation is either precleared or rejected under Section 5, those taxes are released or refunded if the incorporation is precleared, or shall be billed if the incorporation is rejected."

Preclearance was received for S.L. 2003-346 by letter to Gary O. Bartlett from Joseph Rich, dated October 6, 2003.

Part 1D. Butner Commissions.

§ 122C-414. Butner Fire and Police Commission.

(a) There is created a Butner Fire and Police Commission to consist of seven members, to be appointed in accordance with this section.

(b) The Butner Fire and Police Commission shall consist of seven members, three appointed by the Town of Butner, two appointed by the Secretary, one appointed by the Secretary of Crime Control and Public Safety, and one appointed by the Granville County Board of Commissioners. All members appointed by the Town of Butner shall reside within the Town of Butner or its extraterritorial jurisdiction or the Butner Reservation. All members appointed by the Secretary or the Secretary of Crime Control and Public Safety shall either work at or have responsibility for one of the State-run institutions located within the Butner Reservation or shall reside within the Town of Butner and its extraterritorial jurisdiction or the Butner Reservation. The Director of the Butner Public Safety Division of the Department of Crime Control and Public Safety shall serve as an ex officio member of the Butner Fire and Police Commission. No active member of the Butner Public Safety Division of the Department of Crime Control and Public Safety may serve on the Butner Fire and Police Commission.

(c) The Butner Fire and Police Commission has the following duties and responsibilities:

(1) To periodically review, and recommend changes to, the operational policy for the Butner Public Safety Division of the Department of Crime Control and Public Safety.

(2) To consult with the Secretary of the Department of Crime Control and Public Safety in the Department's hiring of the Director of the Butner Public Safety Division of the Department of Crime Control and Public Safety. Such consultation shall include, but not be limited to, the Commission reviewing and providing its comments to the Secretary of the Department of Crime Control and Public Safety on the credentials of the applicants for said position. In performing its functions under this subsection, the Commission members shall have the same access to the applicants' personnel records pursuant to Article 7, Chapter 126 of the General Statutes as the Secretary of the Department of Crime Control and Public Safety and shall be subject to the same restraints concerning the personnel information as set out in said article.

(3) To review and make recommendations to the Secretary of Crime Control and Public Safety concerning the recommended needs of the Butner Public Safety Division of the Department of Crime Control and Public Safety.

(4) To receive and forward citizen complaints received by the Commission concerning the Butner Public Safety Division of the Department of Crime Control and Public Safety to the Director of the Butner Public Safety Division of the Department of Crime Control and Public Safety and the Secretary of the Department of Crime Control and Public Safety as the Commission determines is appropriate.

(5) To perform all such other functions assigned to it by the General Assembly or the Secretary of the Department of Crime Control and Public Safety.

(d) The members of the Butner Fire and Police Commission shall be appointed within 30 days after the effective date of incorporation of the Town of Butner. One member appointed by the Town of Butner, one member appointed by the Secretary, and the member appointed by the Granville County Board of Commissioners shall serve an initial term of two years. The remainder of the members shall serve an initial term of four years. The beginning date of each initial term for the purpose of reappointment shall be September 1, 2007. Thereafter each member shall serve a term of four years. (2007-269, s. 11.)

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

Session Laws 2007-269, s. 1, provides: "Findings and Purpose. The General Assembly finds as follows:

"(1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter 'Secretary') in accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to, in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the 'Butner Reservation').

"(2) The Department of Health and Human Services (hereinafter 'Department') has long operated the Town of Butner with the Secretary or the Secretary's designee acting as the de facto mayor of the Town of Butner.

"(3) The operation of the Town of Butner is not a core function of the Department, and the Department's mission would not be negatively impacted by the incorporation of the Town of Butner.

"(4) The utilities were transferred to the South Granville Water and Sewer Authority ('SGWASA') pursuant to the provisions of Session Law 2006-159 which also provides that SGWASA shall pay to the Department a sum, indexed to inflation, as set out in that legislation to support the operations of the Butner Reservation including the Town of Butner.

"(5) The citizens of the Town of Butner currently also pay a tax authorized by Section 1 of Chapter 830 of the 1983 Session Laws of twenty-five cents (25¢) per one hundred dollars ($100.00) valuation of all real and personal property to the Butner Public Safety Division of the Department of Crime Control and Public Safety.

"(6) The customers of the utility have paid for water and sewer over the years, and those payments have also financed the operations of the Town of Butner.

"(7) Certain personal property has been purchased by the Department for use in operating the Butner Reservation and that personal property traditionally used primarily for the benefit of the portion of the Butner Reservation to be incorporated should be transferred by the State to the newly incorporated Town of Butner."

Session Laws 2007-269, s. 1.1, provides the charter for the newly incorporated Town of Butner.

§ 122C-415. Butner Lands Commission.

(a) There is created a Butner Lands Commission to consist of nine members, to be appointed in accordance with this section.

(b) The Butner Lands Commission shall consist of nine members, two appointed by the Town of Butner, two appointed by Granville County, two appointed by the Secretary, one appointed by the Commissioner of the North Carolina Department of Agriculture and Consumer Services, one appointed by the Secretary of Commerce, and one appointed by the Governor on or before September 1, 2007. The Butner Lands Commission shall make recommendations to the Governor on or before September 1, 2008, concerning:

(1) Land owned by the State of North Carolina in the Butner Reservation that may be well-suited to the creation of a mega-site business and industrial park.

(2) Land owned by the State of North Carolina that should be released for private commercial and residential development.

(3) The use of other lands within the Butner Reservation that will promote agricultural research and development, the development and growth of State institutions, and the preservation of natural lands. (2007-269, s. 11.)

Editor's Note. — Session Laws 2007-269, s. 14.1, provides: "Section 1.1 through 14 of this act shall become effective only if the Charter of the Town of Butner is approved under section 5 of the Voting Rights Act of 1965; provided, however, that if the Charter is not approved under section 5 of the Voting Rights Act of 1965 because of any provisions contained in Article III or Article IV of the Charter, the Butner Advisory Council established in accordance with G.S. 122C-413 may make such amendments to the Article III or IV of the Charter as it, in its sole discretion, deems necessary to obtain such approval, and such amendments shall be filed in accordance with G.S. 160A-111. If the Charter is not approved, Sections 1.1 through 14 of this act have no force and effect. If the Charter is approved, then those sections become effective on the first day of the next calendar month that begins more than three days after the approval, except that the persons appointed as temporary officers under Section 3.2 of the Charter may immediately take the oath of office and take such preliminary actions as may be necessary for initial organization, personnel actions, and budget adoption, in such special meetings as may be called under G.S. 160A-71." Preclearance was received from the United States Department of Justice by letter dated October 1, 2007.

§§ 122C-416 through 122C-420: Reserved for future codification purposes.

Part 2. Black Mountain Joint Security Force.

§ 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7B-1900 outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Health and Human Services. (1983 (Reg.

Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2; 1995, c. 391, s. 3; 1997-320, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 13(gg).)

§§ 122C-422 through 122C-429: Reserved for future codification purposes.

Part 2A. Broughton Hospital Joint Security Force.

§ 122C-430. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Broughton Hospital, North Carolina School for the Deaf at Morganton (K-12), Western Regional Vocational Rehabilitation Facility, J. Iverson Riddle Developmental Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture and Consumer Services, all in Burke County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (1997-320, s. 1; 2007-177, s. 3; 2008-187, s. 30.)

Local Modification. — Burke County: 2004-29, s. 2.

Effect of Amendments. — Session Laws 2007-177, s. 3, as amended by Session Laws 2008-187, s. 30, effective August 7, 2008, substituted "North Carolina School for the Deaf at Morganton (K-12)" for "North Carolina School for the Deaf" and "J. Iverson Riddle Developmental Center" for "Western Carolina Center."

Part 2B. Cherry Hospital Joint Security Force.

§ 122C-430.10. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Cherry Hospital in Wayne County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory of the Cherry Hospital. These special police officers shall also have the power prescribed by G.S. 122C-205 outside the territory of the Cherry Hospital but within the confines of Wayne County. These special police officers may arrest persons outside the territory of the Cherry Hospital but within the confines of Wayne County, when the person arrested has committed a criminal offense within the territory of the Cherry Hospital, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (2001-125, s. 1.)

Part 2C. Dorothea Dix Hospital Joint Security Force.

§ 122C-430.20. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Dorothea Dix Hospital in Wake County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory of the Dorothea Dix Hospital. These special police officers shall also have the power prescribed by G.S. 122C-205 outside the territory of the Dorothea Dix Hospital but within the confines of Wake County. These special police officers may arrest persons outside the territory of the Dorothea Dix Hospital but within the confines of Wake County, when the person arrested has committed a criminal offense within the territory of the Dorothea Dix Hospital, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (2001-125, s. 1.)

Part 2D. Long Leaf Neuro-Medical Treatment Center and Eastern North Carolina School for the Deaf Joint Security Force.

§ 122C-430.30. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Wilson County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory. (2009-315, s. 3.)

Effect of Amendments. — Session Laws 2009-315, s. 4, made this Part effective July 17, 2009.

Part 3. North Carolina Alcoholism Research Authority.

§ 122C-431. North Carolina Alcoholism Research Authority created.

(a) The North Carolina Alcoholism Research Authority is created and shall consist of and be governed by a nine-member board to be appointed by the Governor. Three of the members shall be appointed for a two-year term, three shall be appointed for a four-year term and three shall be appointed for a six-year term; thereafter all appointments shall be for terms of six years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term.

(b) The board shall elect one of its members as chairman and one as vice-chairman. The director of the Center for Alcohol Studies of The University of North Carolina at Chapel Hill shall serve ex officio as executive secretary to the Authority. Board members shall receive the same per diem, subsistence, and travel allowances as members of similar State boards and commissions, provided funds are available in the "Alcoholism Research Fund" for this purpose. (1973, c. 682, ss. 1, 2; 1985, c. 589, s. 2.)

§ 122C-432. Authorized to receive and spend funds.

The Authority may receive funds from State, federal, private, or other sources. These funds shall be held separately and designated as the "Alcoholism Research Fund". The Authority shall spend the Fund on research as to the causes and effects of alcohol abuse and alcoholism and for the training of alcohol research personnel. Expenditures for the purposes specified in this section shall be made as grants to nonprofit corporations, organizations, agencies, or institutions engaging in such research or training. The Authority may also pay necessary administrative expenses from the Fund. (1973, c. 682, s. 3; 1985, c. 589, s. 2.)

§ 122C-433. Applications for grants; promulgation of rules.

(a) Applications for grants are processed by the Center for Alcohol Studies. All applications shall be reviewed by scientific consultants to the Center; and the Center, after review and study, shall make recommendations to the Authority as to the awarding of grants. The Center shall also furnish to the Authority clerical assistance as may be required.

(b) The Authority shall adopt rules relative to applications for grants, the reviewing of grants and awarding of grants. (1973, c. 682, ss. 4, 5; 1985, c. 589, s. 2.)

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